

MSRB
MUNICIPAL SECURITIES RULEMAKING BOARD

RECEIVED

JUN 15 1992

MSRB

In the Matter of the Arbitration between :
:
CRAWFORD MAXSON, :
:
Claimant, : AWARD
:
v. :
: MS 91-14
A.G. EDWARDS & SONS, INC. AND JAMIE SOLOW, :
:
Respondents. :
:

The Undersigned, pursuant to section 31 of MSRB rule G-35, hereby state as follows:

CASE SUMMARY

Claimant alleges, among other things, that Respondents Jamie Solow ("Respondent Solow") and A.G. Edwards & Sons, Inc. ("Respondent Edwards") misrepresented and/or omitted to state material facts in connection with Claimant's purchase of certain municipal bonds (the "bonds"), including but not limited to material facts regarding the quality of the bonds and the risks associated with purchasing the bonds on margin. Claimant also alleges that Respondents induced Claimant to transfer Claimant's account from Respondent Solow's former employer to Respondent Edwards by misrepresenting that such transfer would prevent future margin calls in Claimant's account due to the fact that Respondent Edwards' margin maintenance requirements with respect to the bonds were lower than the other broker/dealer's. The bonds, including Claimant's purchase dates, are:

- \$35,000 face value, SOUTHEAST TX HFC MFHR SECT 8 SER A GTD EXEC LIFE, DTD 8/25/86, DUE 9/1/96, 8.6%, purchased on 3/21/90;
- \$90,000 face value, LOUISIANA HFA MTG REV TAXABLE - M/F GTD EXECUTIVE LIFE, DTD 7/31/86, DUE 8/1/96, 8.610%, purchased on 4/12/90;
- \$100,000 face value, ADAMS CNTY COLO IDR SER A POOL GTD-EXECUTIVE LIFE, DTD 11/25/86, DUE 11/1/96, 9.00%, purchased on 4/19/90;
- \$400,000 face value, SOUTHEAST TX HFC MFHR SECT 8 SER A GTD EXEC LIFE, DTD 8/25/86, DUE 9/1/96, 8.6%, purchased on 4/26/90;

- \$300,000 face value, EL PASO TX HFC MFHR SECURITIZED SER A GTD EXECUTIVE LIFE, DTD 10/15/86, DUE 10/15/96, 8.880%, purchased on 4/27/90;
- \$90,000 face value, MEMPHIS TN HLTH EDL & HSG FAC BRD MFHR SECURITIZED-A-INVSTMT AGREEMENT W/EXEC LIFE, DTD 9/15/86, DUE 9/15/96, 8.680%, purchased on 5/10/90;
- \$100,000 face value, SOUTHEAST TX HFC MFHR SECT 8 SER A GTD EXEC LIFE, DTD 8/25/86, DUE 9/1/96, 8.600%, purchased on 5/25/90.

Claimant alleges that at no time did Respondents disclose to Claimant that the margin calls in Claimant's account were attributable to any bad news about Executive Life and/or the rapid decline in the value of the bonds, nor did Respondents disclose that Claimant's account was near or below the New York Stock Exchange minimum margin maintenance requirements and subject to immediate liquidation. Claimant also alleges that Claimant did not receive either written or verbal notice of the margin call that occurred on or about August 24, 1990 until after Claimant's account at Respondent Edwards was liquidated. Claimant asserts claims for violations of Section 517.301, Fla. Stats., common law fraud, breach of fiduciary duty, negligence, and breach of contract. Claimant asserts that Respondents are jointly and severally liable under the doctrine of respondeat superior and the principles of actual, apparent and implied agency.

Respondent Edwards argues, among other things, that all of the bonds were purchased by Claimant from Respondent Solow while Respondent Solow was employed at another broker/dealer, and that any misrepresentations regarding the quality of the bonds or the risks associated with the use of margin were made by Respondent Solow prior to the time that he became employed by Respondent Edwards. Respondent Edwards argues that when Claimant's account was transferred to Respondent Edwards, in the summer of 1990, it carried with it a substantial margin debt. Respondent Edwards argues that, at the time of the account transfer, Claimant executed a customer agreement which set forth the terms and conditions which would govern Respondent Edwards' handling of Claimant's account and included a complete explanation of the margin requirements that Claimant would be required to meet in order to maintain his investment positions. Respondent Edwards argues that almost immediately upon the transfer of Claimant's account to Respondent Edwards, the value of Claimant's investments fell. Respondent Edwards argues that, pursuant to the terms of the customer agreement, a margin call was issued. Respondent Edwards argues that Claimant advised Respondent Edwards that he did not have additional funds to deposit into his account to meet the margin call, and that he authorized Respondent Edwards to liquidate his account. Respondent Edwards asserts that Claimant fails to state a claim against Respondent

Edwards upon which relief may be granted; that Claimant is barred from recovery by the doctrines of ratification, account stated, estoppel, waiver, laches, assumption of risk, and by Claimant's contributory negligence; that Claimant's damages are the result of unforeseen market factors; and, that Claimant failed to mitigate his damages.

Respondent Solow argues, among other things, that Claimant is a sophisticated investor who understood the risks associated with using margin and was fully familiar with the facts surrounding Executive Life. Respondent Solow also argues that Claimant wanted to hold a large position in Executive Life bonds and was willing to leverage himself to do it. Respondent Solow argues that his former employer raised its margin rates on Executive Life bonds above those required by the New York Stock Exchange or its own house rules for other municipal bonds and that this caused a margin problem in Claimant's account. Respondent Solow denies, however, that he assured Claimant that Claimant's margin problems would be cured once Claimant's account was transferred to Respondent Edwards. Respondent Solow asserts that Claimant fails to state a claim upon which relief may be granted; that Claimant is barred from recovery by the doctrines of ratification and assumption of risk, and by Claimant's contributory negligence; that Claimant's damages are the result of unforeseen market factors; that Claimant failed to mitigate his damages; and that, throughout the period in question, Respondent Solow acted within the scope of his employment.

RELIEF REQUESTED

Claimant seeks relief under Sections 517.211, 517.241 and/or 57.105, Fla. Stats. as follows: approximately \$317,481.31 in compensatory damages; interest at the rate of 12% per annum from the date of purchase; \$2,361.91 in costs; \$25,074.50 in attorneys' fees, pursuant to Sections 517.211(6) and/or 57.105, Fla. Stats.; and, punitive damages.

Respondent Edwards requests that judgment be entered on behalf of Respondent Edwards and against Claimant. Respondent Edwards also asserts a Counterclaim against Claimant for Respondent Edwards' costs and attorneys' fees should Respondent Edwards prevail in the defense of these claims, pursuant to Respondent Edwards' customer agreement with Claimant.

Respondent Solow requests that claims of Claimant against Respondent Solow be denied.

Claimant requests that Respondent Edwards' Counterclaim be denied.

AWARD

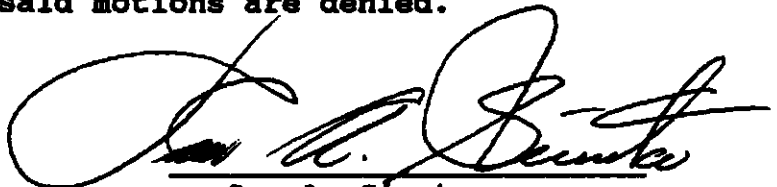
On March 25-26, 1992, in Fort Lauderdale, Florida, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Claimant on January 2, 1991 (filed with the MSRB on February 21, 1991); by Respondent Edwards on April 25, 1991; and, by Respondent Solow on June 10, 1991. The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearing, has determined, in full and final resolution of the issues submitted for determination, as follows:

1. Respondent Edwards shall pay to Claimant the sum of \$79,000.
2. Respondent Solow shall pay to Claimant the sum of \$15,000.
3. Respondent Solow shall pay to Claimant \$5,000 in attorneys' fees, pursuant to Section 517.211(6), Fla. Stats.
4. Claimant shall not be entitled to any recovery other than as set forth above.
5. Respondent Edwards' Counterclaim is denied.
6. Claimant's \$750 arbitration deposit shall be retained by the MSRB as forum fees, pursuant to section 2 of MSRB rule A-16.

OTHER ISSUES

To the extent that Respondents' motions to dismiss and/or for summary judgment were not explicitly disposed of prior to the hearing and/or at the hearing, said motions are denied.


Mark F. Raymond


Sam A. Giunta


Steven A. Hurst

Dated: 6/11/92

STATE OF
COUNTY OF

Florida
Dade

SS.:

On this *5th* day of *June*, 19*92*, before me personally
appeared _____ to me known and known to me to be the
individual described in and who executed the foregoing instrument
and he duly acknowledged to me that he executed the same.

NOTARY PUBLIC, STATE OF FLORIDA
MY COMMISSION EXPIRES AUG. 18, 1993
BONDED THRU MAYNARD BONDING AGENCY

PERSONALLY KNOWN

Margaret L. Krauss
MARGARET L. KRAUSS

STATE OF *FLORIDA*
COUNTY OF *HILLSBOROUGH*

SS.:

On this *11th* day of *JUNE*, 19*92*, before me personally
appeared _____ to me known and known to me to be the
individual described in and who executed the foregoing instrument
and he duly acknowledged to me that he executed the same.

Notary Public
State of Florida at Large
My Commission Expires
May 23, 1993

Therment J. Gonzalez

STATE OF *FLORIDA*
COUNTY OF *BROWARD*

SS.:

On this *8th* day of *JUNE*, 19*92*, before me personally
appeared _____ to me known and known to me to be the
individual described in and who executed the foregoing instrument
and he duly acknowledged to me that he executed the same.

Margaret Jolley

NOTARY PUBLIC STATE OF FLORIDA
MY COMMISSION EXP. DEC. 30, 1995
BONDED THRU GENERAL INS. UND.