



MUNICIPAL SECURITIES RULEMAKING BOARD

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M.S.R.B.

In the Matter of the Arbitration between	:	
	:	
CAMERON J. SYKE and SUSAN R. SYKE,	:	AWARD
Claimants,	:	
	:	
v.	:	MS91-19
	:	SC1-007
BOETTCHER & COMPANY, INC. a/k/a BOETTCHER &	:	
COMPANY, A DIVISION OF KEMPER SECURITIES	:	
GROUP, INC. and RICK HARRISON,	:	
Respondents.	:	
	:	

The Undersigned, pursuant to Section 31 of MSRB Rule G-35, hereby states as follows:

#### CASE SUMMARY

Claimants allege that on May 5, 1988 Respondents solicited Claimants to purchase Villages at Castle Rock Metropolitan District No. 4, Douglas County, Colorado, Series D Bonds, dated August 15, 1986 ("the Bonds"). Claimants allege that in order to induce Claimants to purchase the Bonds, Respondents represented orally that the Bonds were general obligation bonds. Claimants allege that in reliance upon the representations made by Respondents, Claimants purchased \$10,000 face amount of the Bonds at a price of \$85.32. Claimants also allege that they received no offering statement or any written information about the Bonds. Claimants further allege that on January 8, 1990 Castle Rock Metropolitan District No. 4 ("the District") filed a Chapter 9 bankruptcy proceeding in the U.S. District Court for the District of Colorado, and that the District defaulted on the payment of interest on the Bonds on June 1, 1990.

Claimants contend that, subsequent to the default, Claimants learned that the Bonds are not general obligation bonds but revenue bonds, and that the principal and interest on the Bonds are payable solely out of revenue derived by the issuer under a complex contractual arrangement among the issuer and certain other districts. Claimants contend that such contracts are subject to limitations and to being amended under certain circumstances, and that the District and the related districts are all controlled by the same developer. Claimants maintain that Respondents failed to apprise Claimants of any such provisions relating to the Bonds. In addition, Claimants contend that Respondents knew or should have known that development within the District and the contractually related districts was grossly behind projections,

and that, without tremendous additional development, default on the Bonds was imminent.

Claimants assert claims of fraud and deceit in the sale of securities under § 12(2) of the Securities Exchange Act of 1933, 15 U.S.C. § 771(s) (the "1933 Act") and the Colorado Securities Act, C.R.S. § 11-51-125 (1973, as amended), as well as common law fraud.

Respondents deny each and every claim asserted in the statement of claim and affirmatively state that they committed no acts of fraud or deceit. Respondents contend, among other things, that Claimant Cameron Syke ("Mr. Syke") is a former account executive of Respondent Boettcher & Company, Inc. a/k/a Boettcher & Company, a division of Kemper Securities, Inc. ("Boettcher"). Respondents argue that Mr. Syke was employed by Boettcher for over two years, beginning in August, 1983, and that Mr. Syke and Respondent Rick Harrison ("Respondent Harrison") were co-workers at Boettcher prior to Mr. Syke's leaving the company. Respondents argue that, while at Boettcher, Mr. Syke actively sold municipal bonds to his customers, including both rated and non-rated bonds, and general obligation and revenue bonds. Respondents also argue that Mr. Syke sold his customers the very same type of investment at issue in this arbitration: special district municipal bonds financing the development of commercial and residential real property. Respondents further argue that Mr. Syke is a sophisticated investor in securities and that he had purchased both non-rated general obligation municipal bonds and non-rated municipal revenue bonds prior to purchasing the Bonds at issue. In addition, Respondents contend that Mr. Syke is an experienced businessman, accountant, attorney, and real estate broker.

Respondents deny that Respondent Harrison misrepresented the Bonds to be general obligation bonds, and contend that Respondent Harrison told Mr. Syke that the Bonds were a risky investment. Respondents maintain that Respondent Harrison understood the terms and structure of the Bonds and knew that the Bonds were revenue bonds, from having purchased the Bonds during the initial offering in March, 1987, and from having read the official statement. Respondents also deny that Boettcher or Respondent Harrison had any knowledge or information that development in the District was grossly behind projections, or that default on the Bonds was imminent.

Respondents contend that Mr. Syke knew and understood the difference between general obligation bonds and revenue bonds and understood the increased risk to the investor associated with non-rated revenue bonds. Respondents also argue that Mr. Syke knew that principal and interest on the Bonds were payable from revenue derived by the issuer, and knew where to obtain information about the specific contractual arrangements under which

revenue was to be derived by the District. Respondents maintain that such information was not material to Mr. Syke's investment decision because he did not ask to review the official statement or any other written materials concerning the Bonds prior to purchasing them.

#### RELIEF REQUESTED

Claimants request rescission of the transaction and an award against Respondents, jointly and severally, in the amount of \$8,532, plus interest, attorneys' fees, punitive damages, and such other relief as may be granted.

Respondents request that the statement of claim be dismissed and that Respondents be awarded their costs and reasonable attorneys' fees expended in defending this action.

#### AWARD

The undersigned arbitrator reviewed the controversy between the parties set forth in submissions to the arbitrator signed by Claimants on February 2, 1991 (filed with the MSRB on March 5, 1991) and by Respondents on May 3, 1991. The undersigned, having considered the matter solely upon the pleadings and evidence submitted by the parties, pursuant to section 34 of MSRB rule G-35, has determined, in full and final resolution of the issues submitted for determination, as follows:

1. The claims of the Claimants shall be dismissed in their entirety.
2. Each of the parties shall bear its own costs, including attorneys' fees.
3. Claimants' \$200 arbitration deposit shall be retained by the MSRB as forum fees.

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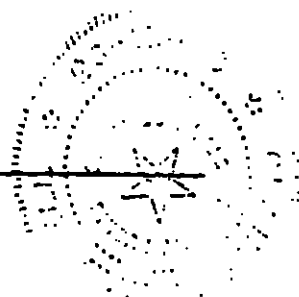
Public Arbitrator

Dated: *Sept. 13, 1991*

STATE OF  
COUNTY OF

ss.:

On this <sup>12<sup>th</sup></sup> 13<sup>th</sup> day of *September*, 19 *91*, 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.



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Charles W. Lutter, Jr.

Dated: *Sept. 13, 1991*