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M.S.R.B.

In the Matter of the Arbitration between :  
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:  
Claimant, :  
:  
v. :  
:  
DAVID H. STEIN; GLICKENHAUS & CO.-NEW JERSEY :  
and FIRST INSTITUTIONAL SECURITIES CORP., :  
:  
Respondents. :  
:

AWARD  
MS 91-24

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

#### CASE SUMMARY

Claimant alleges, among other things, that Respondent Stein recommended that Claimant purchase certain municipal securities which were unsuitable for Claimant and, in order to make said purchases, that Claimant sell other municipal securities which were both suitable and safe. The alleged unsuitable bond purchases at issue are as follows:

- MINNEAPOLIS MN CMNTY DEV AGY COML DEV REV 12.000% DUE 04/01/2010 DTD 04/01/85, purchased by Claimant on 03/25/88 (10M) and on 08/19/88 (10M);
- MINNEAPOLIS MN CMNTY DEV AGY COML RV MILL 12.50% DUE 06/01/2015 DTD 06/01/85, purchased by Claimant on 05/25/88 (10M); on 09/06/88 (10M) and on 10/28/88 (45M).

Claimant also alleges that Respondents Glickenhau & Co.-New Jersey ("Respondent Glickenhau") and First Institutional Securities Corp ("Respondent First Institutional"), as employers of Respondent David H. Stein ("Respondent Stein"), failed to properly supervise Respondent Stein's handling of Claimant's account and should be held liable for the alleged mishandling of said account.

Respondents generally deny Claimant's allegations and argue, among other things, that Claimant fails to state a cause of action upon which relief may be granted, and that Claimant cannot recover in that Claimant directed, authorized, consented to, acquiesced in and/or ratified each of the transactions conducted in his account and that the bonds were suitable at the time of purchase. Respondents also argue that Claimant is barred from recovery by the applicable statute of limitations, by the doctrines of laches and estoppel, and by his failure to mitigate damages.

### RELIEF REQUESTED

Claimant requests an award against the Respondents, jointly and/or severally, in the amount of \$148,630.40 together with interest at the rate of 9% per annum from December 1, 1988, on \$126,458.50, and from April 1, 1989, on \$22,171.90, to the date of the panel's award. Claimant also requests reimbursement of the filing fee, and his attorneys' fees and costs.

Respondents request judgement in their favor on all claims, together with their attorneys' fees and costs.

### AWARD

On September 15-16, 1992, in New York, New York, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Claimant on January 29, 1991 (filed with the MSRB on March 13, 1991); by Respondent Stein on May 13, 1991; and by Respondents Glickenhau and First Institutional on May 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. Claimant's claims are dismissed in their entirety.
2. Each party shall bear its own attorneys' fees and costs.
3. Pursuant to MSRB rule A-16: Claimant's \$750 arbitration deposit shall be retained by the MSRB as forum fees.
4. Respondents' \$200 in adjournment fees shall be retained by the MSRB, pursuant to section 20(b) of MSRB rule G-35.

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Public Arbitrator

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Public Arbitrator

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Industry Arbitrator

Dated: 1/24/92

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Alan S. Farnell

  
Edward J. Bodner

  
Richard J. McCarthy

Dated: 11/24/92