

MSRB
MUNICIPAL SECURITIES RULEMAKING BOARD

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MAY 22 1992

M.S.R.B.

In the Matter of the Arbitration between	:	
JEROME H. DEBS,	:	
	:	
Claimant,	:	AWARD
v.	:	
	:	
SMITH BARNEY, HARRIS UPHAM & CO., INC.,	:	MS 91-28
Respondent.	:	
	:	

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

CASE SUMMARY

Claimant alleges, among other things, that Claimant requested that Respondent arrange and execute a bond swap in December, 1989, for the purpose of generating a tax loss to offset a capital gain incurred separately during 1989. Claimant maintains that the bond swap executed by Respondent not only failed to generate the tax loss requested, but in fact resulted in a taxable gain. Claimant contends that Respondent is liable to Claimant for damages for breach of fiduciary duty, for negligence and for breach of contract, among other claims.

Respondent argues, among other things, that Claimant wanted to increase his bond income by selling certain coupon bonds for registered bonds, that Claimant provided Respondent with a list of bonds to possibly sell, and that, when asked, Claimant refused to provide Respondent with the cost basis of the bonds on the list, despite Respondent's advising Claimant that such information would be useful to determine the tax consequences of any swap. Respondent also argues that Claimant subsequently confirmed the particular bonds to be bought and sold. Respondent contends that Claimant has failed to state any claim for which relief may be granted; that Respondent breached no duty to or any contract with Claimant; that Claimant is barred from seeking any relief by applicable statutes of limitations and as a result of Claimant's consent, ratification, waiver and estoppel concerning the trades at issue; and that Claimant's alleged damages are speculative and without legal or factual basis.

RELIEF REQUESTED

Claimant requests damages in the approximate amount of \$80,181.74, plus interest on said amount, and Claimant's costs and attorneys' fees.

Respondent requests that the claim be dismissed in its entirety, and that all costs be assessed against the Claimant.

AWARD

On March 30-31, 1992, in San Francisco, California, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Claimant on March 1, 1991 (filed with the MSRB on April 19, 1991) and by Respondent on July 11, 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. The claims of the Claimant shall be dismissed in their entirety.
2. Each party shall bear its own costs, including attorneys' fees.
3. Claimant's \$500 arbitration deposit shall be retained by the MSRB as forum fees, pursuant to section 2 of MSRB rule A-16.
4. Each party's \$100 adjournment fee shall be retained by the MSRB, pursuant to section 20(b) of MSRB rule G-35.

Public Arbitrator

Public Arbitrator

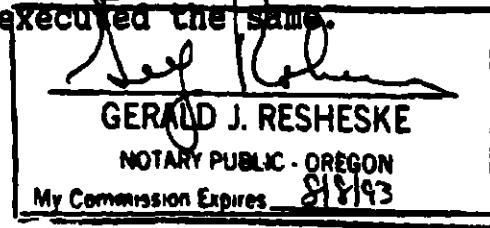
Industry Arbitrator

Dated: May 21, 1992

STATE OF OREGON
COUNTY OF LAUREL

SS.:

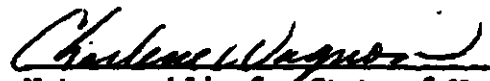
On this 15 day of May, 1992, before me personally appeared _____ to me known and known to me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



STATE OF
COUNTY OF

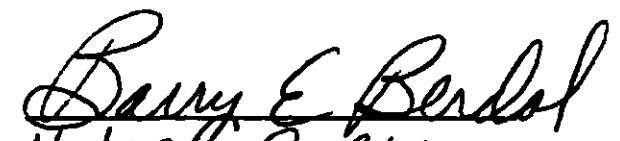
SS.:

On this 19th day of May, 1992, 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 for State of Washington
Residing at _____
My commission expires: 2-25-96
SS.:

STATE OF WISCONSIN
COUNTY OF BURNETT

On this 21 day of MAY, 1992, 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
POLK COUNTY WISCONSIN


Respondent requests that the claim be dismissed in its entirety, and that all costs be assessed against the Claimant.

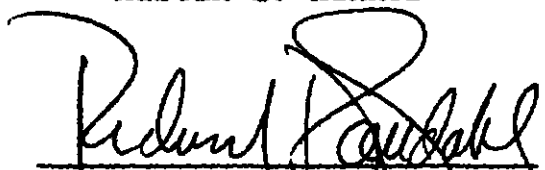
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Martin E. Henner


Stephen C. Bauer


Richard D. Sandahl

Dated: May 21, 1992