

MSRB

MUNICIPAL SECURITIES RULEMAKING BOARD

OCT 18 1992

In the Matter of the Arbitration between :

Claimants,

v.

ROBERT ROSENBERG and NORRIS & HIRSHBERG,
INC.,

Respondents.

AWARD
MS 91-60

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

CASE SUMMARY

Claimants allege, among other things, that Respondents recommended certain municipal securities which were unsuitable for Claimants, that Respondents made misrepresentations and omissions of material facts to Claimants regarding said securities including but not limited to failing to disclose the risk of default, and that Respondents sold the securities to Claimants at inflated prices. The bonds at issue are:

- \$20,000 face amount of JOHNSON CNTY IN 8.500% due 12/01/94, purchased by Claimants on 03/10/87;
- \$20,000 face amount of JOHNSON CNTY IND ECONOMIC DEV FIRST MTG FIRST NEPENTHE HLTH PJ DTD 12/01/86, 8.250% due 12/01/92, purchased by Claimants on 12/12/89;
- \$15,000 face amount of SANDUSKY CNTY OH NURSING HOME D & M RLTY PROJ 13.750% due 12/01/14, purchased by Claimants on 06/02/88;
- \$10,000 face amount of WEWOKA OK INDL AUTH 1ST MTG COMMERCIAL BRICK CORP 8.000% due 02/01/94, purchased by Claimants on 12/17/87;
- \$10,000 face amount of RICHMOND CNTY HLTH CORP GERIATRIC HLTH CARE INC 9.250% due 03/01/99, purchased by Claimants on 04/07/88;
- \$5,000 face amount of STATE COLLEGE BORO PA INDL & COML DEV AUTH 14.500% due 05/01/11, purchased by Claimants on 05/12/88;
- \$10,000 face amount of GORDON GA DEV AUTH HARGIS ENTERPRISES INC. 10.000% due 03/01/97, purchased by Claimants on 03/07/88;
- \$20,000 face amount of JACKSON PARK HOSPITAL FOUNDATION CHICAGO ILLINOIS DTD 07/01/75, 9.000% due 03/01/05, purchased by Claimants on 11/14/88;

- \$5,000 face amount of NEW ORLEANS LA DEV BRD DAYS INNS AMER INC PROJ 12.000% due 01/01/98, purchased by Claimants on 03/29/88;
- \$5,000 face amount of WARREN COUNTY GEORGIA DEVELOPEMENT [sic] AUTHORITY REV KEARNEY-NATL PROJ DTD 03/01/74, 7.000% due 03/01/94, purchased by Claimants 04/11/89;
- \$25,000 face amount of CRISP CNTY GA DEV GORDON JENSEN EVANGEL ASSN 10.500% due 06/01/12, purchased by Claimants on 08/13/87;
- \$5,000 face amount of WAUKEGAN IL FIRST MTG HEALTHCARE 12.500% due 08/01/98, purchased by Claimants on 01/02/86.

Claimants assert, among other things, claims for violations of Sections 2 and 4 of the NASD Rules of Fair Practice, violations of Section 2 of the Illinois Consumer Fraud and Deceptive Business Practice Act ("Illinois Act"), and breach of fiduciary duty under Illinois Common Law.

Respondent Robert Rosenberg ("Respondent Rosenberg") argues, among other things, that the recommendations made to Claimants were suitable in light of the Claimants' securities holdings, financial situation and needs. Respondent Rosenberg denies that he violated the NASD Rules of Fair Practice and argues that no private right of action exists for alleged violations of said rules. Respondent Rosenberg also denies that he violated the Illinois Act and argues that the Statement of Claim does not set forth with particularity any facts which would serve as a basis for a violation of the Illinois Act. Respondent Rosenberg argues that all the claims that are based upon alleged violations of the anti-fraud provisions of the federal securities laws are time-barred, and that all the claims asserted under the Illinois Act are time-barred except on three of the transactions at issue. In addition, Respondent Rosenberg argues that he complied with his duties as a securities professional. Respondent Rosenberg further argues that Claimants' alleged damages are overstated and that Claimants have failed to mitigate said damages.

Respondent Norris & Hirshberg, Inc. did not submit a Statement of Answer or appear at the hearing in this matter.

RELIEF REQUESTED

Claimants request an award against the Respondents, jointly and severally, in the approximate amount of \$191,407.89. Claimants seek to recover their attorneys' fees and costs under Section 10a of the Illinois Act.

Respondent Rosenberg denies the Claimants' allegations and asserts a counterclaim against the Claimants in the approximate amount of \$25,000 for attorneys' fees and expenses.

AWARD

On August 12, 1992, in Chicago, Illinois, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Claimants on August 29, 1991 (filed with the MSRB on August 30, 1991) and/or on August 28, 1992, and by Respondent Rosenberg on December 30, 1991. Respondent Norris & Hirshberg, Inc. did not file a submission to arbitration. 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. Respondents Rosenberg and Norris & Hirshberg, Inc. are jointly and severally liable to the Claimants in the amount of \$11,400.
2. Respondent Rosenberg's counterclaim is dismissed. Claimants also shall bear their own attorneys' fees and costs.
3. Pursuant to MSRB rule A-16: Claimants' \$750 arbitration deposit shall be refunded to the Claimants by the MSRB and assessed jointly and severally against the Respondents as forum fees.

Public Arbitrator

Public Arbitrator

Industry Arbitrator

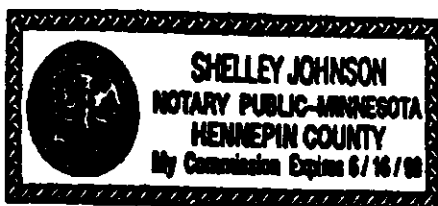
Dated: October 12, 1992

STATE OF
COUNTY OF

Minnesota
Hennepin

SS.:

On this 7 day of October, 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.



Shelley Johnson

STATE OF *Michigan*
COUNTY OF *Wayne Acting in Oakland*

SS.:

On this 9 day of Oct, 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.

JEFFREY M. CAREVIC
Notary Public, Wayne County, Mich.
My Commission Expires March 16, 1994.

Jeffrey M. Carevic

STATE OF *Missouri*
COUNTY OF *St. Louis*

SS.:

On this 12 day of October 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.

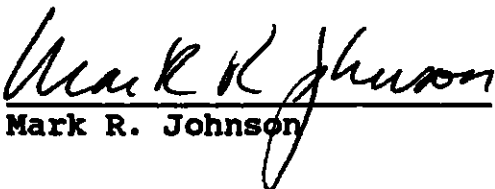
Rosalie A. Sheeran

ROSALIE A. SHEERAN
NOTARY PUBLIC

AWARD

On August 12, 1992, in Chicago, Illinois, the undersigned arbitrators heard the controversy between the parties set forth in submissions to the arbitrators signed by Claimants on August 29, 1991 (filed with the MSRB on August 30, 1991) and/or on August 28, 1992, and by Respondent Rosenberg on December 30, 1991. Respondent Norris & Hirshberg, Inc. did not file a submission to arbitration. 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. Respondents Rosenberg and Norris & Hirshberg, Inc. are jointly and severally liable to the Claimants in the amount of \$11,400.
2. Respondent Rosenberg's counterclaim is dismissed. Claimants also shall bear their own attorneys' fees and costs.
3. Pursuant to MSRB rule A-16: Claimants' \$750 arbitration deposit shall be refunded to the Claimants by the MSRB and assessed jointly and severally against the Respondents as forum fees.


Mark R. Johnson


Oliver C. Slocum


Robert J. Beck

Dated: October 12, 1992