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M.S.R.B.

In the Matter of the Arbitration between

Claimants,

v.

RONALD S. MCGRATH; EDMUND SINGER; FRANK G.  
ZARB and JAMES MAHONEY,

Respondents.

AWARD

MS91-61  
SC1-021

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

**CASE SUMMARY/RELIEF REQUESTED**

Claimants maintained a joint account at Smith Barney's West Palm Beach office with account executive, Respondent James Mahoney ("Respondent Mahoney"). Two \$5,000 Polk County bonds were deposited into the account on November 1, 1990. Claimant ("Claimant" in the singular hereinafter) understood that both Polk County bonds had been called when, in fact, only one of the two bonds was called.

Before Claimants received any proceeds from the redemption of the Polk County bonds, Claimants made two purchases through their account:

<u>Trade Date</u>	<u>Bond</u>	<u>Settlement Date</u>	<u>Cost</u>
12/7/90	Houston TX Airport 9.50%, \$10,000 face due 7/1/10	12/14/90	\$12,865.64
12/13/90	St. Paul, MN Port Auth. 9.50%, \$10,000 face due 12/1/11	12/20/90	\$11,104.84

Claimants failed to timely pay by the settlement date or by the end of December, 1990 for the first of the two purchases. Payment of \$11,104.84 for the second purchase was mailed to Smith Barney on December 19, 1990.

Claimant and Respondent Mahoney discussed how the Claimants were going to obtain sufficient funds to pay for the first purchase. Ultimately, the second bond purchase was reversed for

settlement on January 8, 1991 to pay in part for the first bond purchase. Claimants argue, among other things, that they did not authorize the reversal and that, as a result of the reversal, Claimants suffered a loss of \$784.70. Claimants seek to recover this amount, plus interest.

Respondents argue, among other things, that Claimants acquiesced in reversing the second purchase. However, Claimants argue that they were not fully informed by Respondent Mahoney of all available alternatives to raise the needed funds to complete the first transaction and to avoid a loss to themselves. Respondents maintain that Claimants' claims are without merit and should be dismissed, with costs assessed against Claimants.

#### AWARD

The undersigned arbitrator reviewed the controversy between the parties set forth in submissions to the arbitrator signed by Claimants on August 14, 1991 (filed with the MSRB on September 12, 1991); by Respondent Ronald S. McGrath on November 7, 1991; by Respondent Edmund Singer on November 18, 1991; by Respondent Frank G. Zarb on December 18, 1991, and by Respondent Mahoney on March 11, 1992. The undersigned, having considered the matter solely on 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:

Claimants have very capably argued their case. In doing so, the Claimants make it clear that they were adequately knowledgeable in these transactions and that they were capable of making an independent judgement as to what action(s) was needed to pay for the first bond purchase. Even if the facts are exactly as Claimants allege, which I doubt, nonetheless I find that they are not entitled to recover their loss from Respondent Mahoney, or any of the other individuals employed by Smith Barney. Accordingly, Claimants' claims are dismissed in their entirety. In addition, the parties shall each bear their own costs and legal fees. Pursuant to MSRB rule A-16, Claimants' \$15 filing fee shall be retained by the MSRB as forum fees.

  
Gerald P. Lepp

Dated: *November 19, 1992*

STATE OF *New York*  
COUNTY OF *Kings*

ss.:

On this *19<sup>th</sup>* day of *November*, 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.

*Mary Cecilia Volk*

MARY CECILIA VOLK  
Notary Public, State of New York  
No. 34-4978229  
Qualified in Kings County  
Commission Expires Feb. 25, 1993