



MUNICIPAL SECURITIES RULEMAKING BOARD

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M.S.R.B.

In the Matter of the Arbitration between	:	
	:	
MARY E. MIDGLEY,	:	AWARD
	:	
Claimant,	:	
	:	
v.	:	
	:	MS91-72
EUGENE LANTON,	:	SC1-024
	:	
Respondent.	:	
	:	

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

CASE SUMMARY/RELIEF REQUESTED

In this small claim to be decided on the papers submitted, Claimant seeks damages of \$5764 plus interest at 6% for 3 years for a total claim of \$6800. Her complaint is allegedly founded on excessive markups and failure to disclose the call features on two tax exempt municipal revenue bonds. Claimant seeks recovery from the registered representative who sold her the bonds and not the dealer (A.F. Green & Co., Inc.) by whom the registered representative was employed at the time of sale. The bonds were purchased by Claimant in May and June, 1988 and she filed this arbitration on October 18, 1991. She still owns the bonds.

The registered representative has denied generally the allegations of the statement of claim and asserted that he was a mere employee of the dealer A.F. Green and had no knowledge whatever of the markup on the bonds and had nothing to do with the calculation of the markups which was done by the firm's principals and trading desk. With respect to the bonds' call features, he states: "I never represented these bonds to Ms. Midgley as being 'non-callable'. Callability was never even talked about. It was not a factor in our discussion" (Response, p. 1, par. 3). The confirmation slips for both bonds fail to disclose the call features of either of them and quotes the yield as being "YTM". Respondent received copies of the confirmations contemporary with the transactions. According to Respondent, the gross commissions amounted to \$540 and \$420 for a total of \$960 in which he shared at 50% or \$480.

I find no credible proof as to the amount of the allegedly excessive markup (other than reference to it as a matter of A.F. Green practice; see Bond Buyer Nov. 2, 1990) or that Respondent was aware of the practice or that he had any input with respect to quantifying the markup. I do find, however, that Respondent

was remiss in his obligations to the customer/Claimant in that he failed to disclose and discuss with her the call features in the bonds so she could make an enlightened decision-a suitability determination--(see quoted language above, par. 2) and that upon receipt of his copy of the confirmations he should have noted that they were not in compliance with MSRB rule G-15. By virtue of this failure, I find in favor of Claimant.

AWARD

The undersigned, having reviewed and considered the above-captioned matter (as set forth in submission agreements signed by Claimant on August 23, 1991 and by Respondent on November 18, 1991) 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:

Claimant is entitled to recover of Respondent Eugene Lanton his portion of the commissions received in the amount of \$480, with interest thereon at the New York legal rate of 9% from July 1988 to the date of this award and thereafter at the same rate until actually paid by Respondent.

The MSRB is to retain all filing fees paid by Claimant.

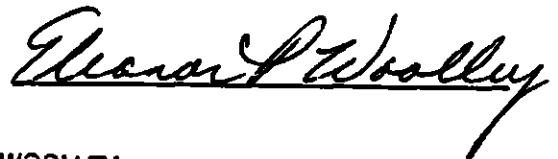
Public Arbitrator

Dated: MARCH 23, 1993

STATE OF NEW JERSEY
COUNTY OF MONMOUTH

ss.:

On this 23rd day of MARCH, 1993, 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.



ELEANOR WOOLLEY
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JANUARY 25, 1994

was remiss in his obligations to the customer/Claimant in that he failed to disclose and discuss with her the call features in the bonds so she could make an enlightened decision-a suitability determination--(see quoted language above, par. 2) and that upon receipt of his copy of the confirmations he should have noted that they were not in compliance with MSRB rule G-15. By virtue of this failure, I find in favor of Claimant.

AWARD

The undersigned, having reviewed and considered the above-captioned matter (as set forth in submission agreements signed by Claimant on August 23, 1991 and by Respondent on November 18, 1991) 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:

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The MSRB is to retain all filing fees paid by Claimant.

Michael J. Shalley
Michael J. Shalley

Dated: MARCH 23, 1993

STATE OF NEW JERSEY
COUNTY OF MONMOUTH

ss.:

On this 23rd day of MARCH, 1993, before me personally appeared Michael J. Shalley 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.

Eleanor P. Woolley

ELEANOR WOOLLEY
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES JANUARY 25, 1994