

MSRB
MUNICIPAL SECURITIES RULEMAKING BOARD

DEC 15 1992

REC'D.

In the Matter of the Arbitration between :

Claimant, :

v. :

FIRST ASSOCIATED SECURITIES GROUP, INC. and
MARC MILLER, :

Respondent. :

AWARD
MS91-80
SC1-029

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

CASE SUMMARY/RELIEF REQUESTED

On or about June 19, 1991, Claimant purchased from Respondent Marc Miller ("Respondent Miller"), a representative of Respondent First Associated Securities Group, Inc. ("Respondent FAS"), \$50,000 face amount of DANVILLE CALIF IMPT BD ACT 1915, 6.400%, DUE 9/2/92, ASSMT DIST NO 88-1 TASSAJARA RANCH (the "Bonds"). Claimant alleges, among other things, that Respondent Miller subsequently confirmed the purchase of the Bonds, but did not mention either the settlement date or the gross amount of the purchase price. Claimant alleges that Claimant left for Europe on June 27, 1991 and did not return until late Sunday, July 14, 1991.

Claimant alleges that he picked up his mail around noon on July 15, 1991 and there was an account statement from Respondent FAS showing that Claimant had bought the Bonds on June 26, 1991 and a post card from Respondent Miller stating "'Monday Settlement July 15th'" followed by wire instructions. Claimant alleges that he telephoned Respondent Miller and left a message on his answering machine, and that at 1:20 p.m., Pacific Time, on the 15th he had the sum of \$51,515.83 wire transferred to Respondent FAS. Claimant alleges that Respondent Miller telephoned from New York at 1:30 p.m., Pacific Time, that day and left a message with Claimant's wife asking for Claimant to call another individual "'to confirm everything has gone through.'" Claimant alleges that he received that message when he returned home the evening of the 15th.

Claimant alleges that the following morning he telephoned the other individual as requested by Respondent Miller. Claimant alleges that the individual said that he was only a trader, that

he did not wish to speak with Claimant, and that Claimant should speak with Respondent Miller. Claimant alleges that he then telephoned Respondent Miller who, he alleges, stated that "he did not know where matters stood" and that he would have to get back to Claimant. Claimant alleges that Respondent Miller telephoned him back around 10:30 a.m., Pacific Time, that morning and told Claimant that (1) Claimant had missed the settlement date, since he had wired the funds after the cut-off time of 11:00 a.m., Pacific Time; (2) that Claimant's purchase would be liquidated and the Bonds would be sold to a third party at a lower price; and, (3) that Claimant would be liable for the difference.

Claimant alleges that he subsequently made oral and written demands on Respondents for either delivery of the Bonds or the return in full of the funds that he wire transferred plus interest.

Claimant seeks by this action to recover \$474, representing funds that have not been returned to him, plus costs, interest, and other compensation as the arbitrator deems appropriate. Claimant argues that he followed the settlement instructions that he received from Respondent Miller and wire transferred the funds on July 15th. Claimant maintains that there was no mention of a cut-off time in said instructions. Claimant also contends that he never received a copy of a settlement notice purportedly sent to him that referred to a settlement date of June 26th.

Respondent Miller argues, among other things, that Claimant was advised at the time of purchase that his funds were due on settlement date, that the sale would be regular way settlement, and "to please be prompt and pay on time." Respondent Miller argues that when Claimant's check failed to arrive by settlement date, Respondent Miller made numerous telephone calls and left numerous messages on Claimant's answering machine. Respondent Miller argues that he obtained extensions of the settlement date to hold off as long as possible initiating a sell-out. Respondent Miller argues that Claimant did not advise him that he was going on a three week vacation one day after settlement. Respondent Miller argues that on the day that Claimant's wired funds did arrive, they arrived a few hours after the close of the market and after the sell-out already had been finalized. Respondent Miller contends that he did his best to accommodate Claimant by pushing the extension date as far as he could.

Respondents Miller and FAS argue that this is not the first time that Claimant has been late in paying for a transaction and that Respondent Miller has incurred losses and expenses on behalf of Claimant in the past. Respondent Miller argues that Claimant is a sophisticated investor whose relationship with Respondent Miller extends over six years and thirty trades, and that it is irresponsible for Claimant to claim that he was unaware about settlement dates or the obligation to pay at a certain time when a purchase is made. Respondents Miller and FAS also argue that the NASD determined to take no action against them in connection with a complaint from the Claimant.

AWARD

On October 1, 1992, in San Francisco, California, the undersigned arbitrator heard the controversy between the parties set forth in submissions to the arbitrator signed by Claimant on October 15, 1991 (filed with the MSRB on November 4, 1991); by Respondent Miller on January 2, 1992; and by Respondent FAS on August 3, 1992. The undersigned, 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 Miller and FAS shall be jointly and severally liable to Claimant for the sum of \$474.
2. No interest shall be awarded and each party shall bear its own costs.
3. Pursuant to MSRB rule A-16: Claimant's \$15 filing fee and \$15 hearing deposit shall be retained by the MSRB as forum fees.

Dated: 12/14/92

Public Arbitrator

STATE OF WASHINGTON
COUNTY OF KING

ss.:

On this 14th day of December, 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.

LS

Shirley L. Lusk
Notary Public for and
for the State of Washington
J. L. Lusk

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3. Pursuant to MSRB rule A-16: Claimant's \$15 filing fee and \$15 hearing deposit shall be retained by the MSRB as forum fees.


Daniel S. Gottlieb

Dated: 12/14/92

STATE OF WASHINGTON
COUNTY OF KING

33. :

On this 14th day of December, 1992, before me personally appeared Daniel S. Gottlieb 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.

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