

MSRB
MUNICIPAL SECURITIES RULEMAKING BOARD

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JUN 19 1992

E.C.D.

In the Matter of the Arbitration between		:
		:
GEORGE J. LINDENBAUM		:
	Claimant,	:
V.		:
		:
SMITH CULVER, INC.		:
	Respondent.	:
		:

AWARD
MS91-90
SC1-033

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

CASE SUMMARY/RELIEF REQUESTED

Claimant alleges, in substance, that Respondent withheld material information with respect to a sinking fund redemption provision applicable to \$20,000 principal amount of pre-refunded bonds, purchased by Claimant from Respondent on June 6, 1990. Claimant seeks to recover the sum of \$2,383.15, which represents the difference between the amount Claimant paid for the bonds (\$23,195) and the amount he received following a mandatory sinking fund call by the issuer of the bonds of \$15,000 principal amount (\$15,000) and a repurchase of the balance by Respondent following Claimant's demand (\$5,811.85).

Respondent argues, in substance, that the existence of the sinking fund call feature was disclosed to Claimant both verbally and in writing. Respondent requests that Claimant's claim be dismissed in its entirety.

FINDINGS AND AWARD

The undersigned arbitrator reviewed the controversy between the parties set forth in submissions to the arbitrator signed by Claimant on December 9, 1991 (filed with the MSRB on December 17, 1991); and by Respondent on January 21, 1992. The undersigned, having considered the matter solely upon the pleadings and evidence submitted by the parties (including the additional information requested by the undersigned of Respondent and submitted by the Claimant), pursuant to section 34 of MSRB rule G-35, has determined, in full and final resolution of the issues submitted for determination, as follows:

FINDINGS

It would appear from the pleadings and exhibits that Respondent has substantially complied with the applicable provisions of the MSRB rules (see, in particular, rule G-15 and the MSRB interpretations and interpretive letters which follow the rule). Nevertheless, a fair disposition of the matter turns not only on the form of the confirmation, but on the question of whether or not the requirements of rule G-17 were carefully observed by Respondent. As to that determination, the undersigned has available only the written submissions of the parties. While a better test of the compliance with rule G-17 could be developed by an analysis of the telephone conversations between the parties, no such transcript has been provided.

As a legal matter, it could be argued that Claimant has the burden of establishing that he was misled or misinformed as to the existence of the sinking fund which resulted in a par call of the bonds and that, on the written record, he has not sustained the burden of proof. But my view is that something more than strict legal considerations is operating here. A municipal securities dealer has an enormous advantage over the average public customer in terms of the technical details of the municipal marketplace (calculating yields, call features, premiums, amortization, and the like). While a dealer may exert a good faith effort to make full disclosure of the security, redemption and payment features of the instrument he offers for sale, too often (and, I believe, in this instance) there is a failure of communication between buyer and seller which, I suspect, stems from the unequal distribution of the fund of sophistication I have described.

AWARD

ACCORDINGLY, award is made as follows:

1. Respondent shall pay to Claimant the sum of \$1,500.
2. Claimant's \$25 filing fee and \$25 hearing deposit shall be retained by the MSRB as forum fees, pursuant to MSRB rule A-16(b).

Public Arbitrator

Dated: 6/17/92

STATE OF New York
COUNTY OF SUFFOLK

ss.:

On this 17 day of June, 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.

DIANE M. CARPENTER
Notary Public, State of New York
No. 4964038
Qualified in Suffolk County
Commission Expires March 19, 1994

Diane M. Carpenter

FINDINGS

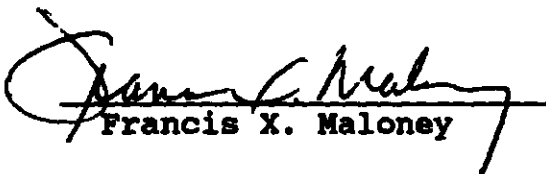
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Francis X. Maloney

Dated: 6/17/92