

Bond Case Briefs

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BONDS - NEBRASKA

GE Funding Capital Market Services, Inc. v. Nebraska Investment Finance Authority

United States District Court, S.D. New York - September 14, 2016 - Slip Copy - 2016 WL 4784002

Nebraska Investment Finance Authority ("NIFA") is an independent, quasi-governmental body established under the Nebraska Investment Finance Authority Act. Between 1994 and 2000, NIFA issued a series of revenue bonds to finance its acquisition of mortgage loans or mortgage-backed securities, which were generated in connection with purchases of homes by eligible Nebraska residents.

For each bond series, NIFA and the Trustee entered into an Investment Agreement GE Funding Capital Market Services, Inc. ("GE"). The Investment Agreements provided that GE would pay a fixed rate of return to NIFA on amounts deposited in the Accounts created in connection with each series of bonds. The Investment Agreements further provided that NIFA could make withdrawals from the Accounts for "Permitted Withdrawal Purposes" and that GE would remit to NIFA on the "Termination Date" the outstanding principal balance and all unpaid interest thereon. This arrangement was designed to provide NIFA with an income stream so that NIFA could make debt service payments on, and ultimately redeem, each series of bonds.

NIFA redeemed the bonds on a rolling basis between 2005 and 2010. Although the Investment Agreements required the Trustee to give GE notice if and when each bond series was redeemed, GE was not aware that any of the bond series had been redeemed until late 2014. NIFA continued to invest funds and accept interest payments under the Investment Agreements.

In September 2014, GE requested an explanation why the Investment Agreements had remained funded following the redemption of the bonds. On February 13, 2015, after GE and NIFA failed to reach agreement as to the status of the Investment Agreements following redemption, GE filed this action. GE sought a declaratory judgment that NIFA had no right to further interest payments under the relevant Investment Agreement following redemption of each series of bonds and that NIFA's conduct in that regard constituted ultra vires activity. GE also brought claims for unjust enrichment, constructive trust, breach of contract and breach of the duty of good faith and fair dealing.

NIFA and GE proffered competing interpretations of the Investment Agreements as they pertain to when interest payments to NIFA cease. NIFA argued that it is entitled to interest payments until the relevant Investment Agreement terminates, either on the Termination Date or "earlier ... in accordance with its terms." Because neither the Termination Date nor any of the events expressly defined as triggering termination have come to pass for any of the Investment Agreements, NIFA contended that it should continue to receive interest payments. GE argued that the determinative issue was not whether the Investment Agreements have terminated but whether there was still a qualifying Investment. Because the Investments are defined in terms of series-specific Accounts, GE posited that redemption of each bond series extinguished the associated Accounts and, with them, the qualifying Investment.

The District Court found that both interpretations of the Investment Agreements are reasonable and cannot be reconciled with one another. Section 2.2 of the Investment Agreements provides that interest payments shall be made on the “Investment” and until the “Termination Date.” “Each party begins its interpretation with one of those key terms, and by following the plain language of the Investment Agreements the parties come to opposite conclusions as to whether NIFA is entitled to interest payments following bond redemption.”

“Since the Investment Agreements are ambiguous regarding NIFA’s entitlement to interest payments following redemption of the bonds, NIFA’s motion for judgment on the pleadings is denied with respect to GE’s claims for declaratory judgment on that issue.” The court also denied NIFA’s motion for judgment on the pleadings with respect to the ultra vires and breach of contract claims.