

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

LEHMAN BROTHERS INTERNATIONAL
(EUROPE) (in administration),

Plaintiff,

-against-

AG FINANCIAL PRODUCTS, INC.,

Defendant.

Index No. 653284/2011

NOTICE OF ENTRY

Hon. Marcy Friedman

PLEASE TAKE NOTICE that the attached is a true copy of a Decision and Order of the Supreme Court, Appellate Division, First Department, dated January 17, 2019, and duly entered in the office of the Clerk of the Court on January 17, 2019.

DATED: New York, New York
January 17, 2019

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SULLIVAN, LLP
/s/ Andrew J. Rossman

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Renwick, J.P., Manzanet-Daniels, Gische, Mazzarelli, Kahn, JJ.

8137 & Lehman Brothers International Index 653284/11
M-5914 (Europe) (in administration),
Plaintiff-Respondent,

-against-

AG Financial Products, Inc.,
Defendant-Appellant.

- - - - -

Association of Financial Guaranty
Insurers,
Amicus Curiae

Cleary Gottlieb Steen & Hamilton LLP, New York (Roger A. Cooper of counsel), for appellant.

Quinn Emanuel Urquhart & Sullivan LLP, New York (Andrew J. Rossman of counsel), for respondent.

Patterson Belknap Webb & Tyler LLP, New York (Erik Haas of counsel), for amicus curiae.

Order, Supreme Court, New York County (Marcy S. Friedman, J.), entered July 31, 2018, which, to the extent appealed from, denied defendant’s motion for summary judgment dismissing the second cause of action in its entirety, unanimously affirmed, with costs.

Despite the discretion afforded to defendant under the parties’ agreements to calculate its loss after the agreements had been terminated, plaintiff raised an issue of fact as to whether defendant’s loss calculation was reasonable and in good

faith as required by the agreements. The court properly considered plaintiff's evidence, including expert reports, in support of its claim that defendant's calculations were not reasonable under the circumstances (see *Hoag v Chancellor, Inc.*, 246 AD2d 224, 230-231 [1st Dept 1998]).

We have considered defendant's remaining arguments and find them unavailing.

M-5914 - *Lehman Brothers International (Europe) (in administration) v AG Financial Products, Inc.*

Motion for leave to file amicus curiae brief granted.

THIS CONSTITUTES THE DECISION AND ORDER
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: JANUARY 17, 2019



CLERK