

<b>Lehman Bros. Intl. (Europe)(in administration) v AG Fin. Prods., Inc.</b>
2019 NY Slip Op 00364
Decided on January 17, 2019
Appellate Division, First Department
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This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on January 17, 2019

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

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**[\*1] Lehman Brothers International (Europe)(in administration), Plaintiff-Respondent,**

**v**

**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

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