

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Nils B.R. Carlson

AWARD

vs.

NASD #90-02092

Name of Respondents

Sacks Securities, Inc.
Richard Sacks
Gruntal & Company, Inc.

REPRESENTATION

For Claimant: Worth H. Morton, Santa Rosa, California

For Respondents:

Sacks Securities, Inc.	}	Richard Sacks
Richard Sacks:		Novato, California
Gruntal & Company:		Eric S. Hutner, Esq., Gruntal & Company, New York, New York.

CASE INFORMATION

Statement of Claim filed: July 30, 1990

Claimant's Submission Agreement signed: July 9, 1990

Statements of Answer filed by Respondents:

Sacks Securities, Inc.:	None filed
Richard Sacks:	None filed
Gruntal & Co.:	December 5, 1990

Amended Statement of Answer and Cross-claim filed: February 27, 1992

Respondents' Submission Agreements signed:

Sacks Securities, Inc.:	None filed
Richard Sacks:	None filed
Gruntal & Company:	None filed

HEARING INFORMATION

Hearing Date/ Sessions: September 10, 1991 - (2 sessions)
May 7, 1992 - (2 sessions)

Hearing Location: San Francisco, California

CASE SUMMARY

Claimant alleged unauthorized trades (short sale) with respect to his order to sell his Covington bonds.

Respondent Gruntal, as clearing agent for Sacks Securities, denied liability for Claimant's loss. In the amended answer, Gruntal conceded that Claimant had been undercredited for the sale of his bonds, and asserted in the cross-claim that the error was the result of improper instructions from Respondents Sacks Securities and Richard Sacks, and therefore the liability for Claimant's loss was that of Sacks Securities and Richard Sacks.

RELIEF REQUESTED

Claimant requested damages of \$7,427 plus interest. At hearing, Claimant added a request for damages for the tax liability incurred when his IRA account was sold out to cover the short sale of Covington bonds.

Gruntal & Company requested dismissal of all claims asserted by Claimant, and requested full recovery from Sacks Securities and Richard Sacks in the event Gruntal is found liable to Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

OTHER

Because of the extraordinary confusion and multiple misapprehensions upon which this claim uneasily rests, this award will include a recitation of certain findings.

1. It is quite likely Richard Sacks misspoke and directed Gruntal & Company to sell 12 units rather than 12,000 worth of bonds. It also appears that Mr. Sacks made early attempts to rectify the error without realizing how the confusion arose. That his attempts could well have been more efficient is supported by his behavior in this arbitration (failure to answer the claim or cross-claim, tardiness, unpreparedness, etc.).

2. Notwithstanding Mr. Sacks' probable initial error, the underpayment to Claimant could have been corrected by Gruntal & Company, whose representatives were on notice something was wrong.

Mr. Soblowski testified that he was not questioned about the transaction he carried out, yet years later recalled having to perform additional calculations necessary to value properly a unit sale.

Gruntal admits to a coding error which caused the confirmation to note a sale of 12,000 rather than 12 u. Had the confirm accurately reflected the actual transaction carried out, the erroneous order to sell 12 units rather than 12,000 worth of bonds would have become apparent to Mr. Sacks and could have been corrected. Instead the confusion was compounded by mutual but differing misperceptions.

3. The subsequent short sale of 8,000 worth of bonds arose from Mr. Sacks' misplaced attempt to cure the underpayment after communication with Gruntal failed to do so. However, this error had its genesis in Gruntal's original failure to investigate adequately or comprehend notice of an underpayment.

4. The perception that Gruntal's response to notice of underpayment was inadequate is reinforced by Gruntal's failure to carry out its own decision to "rebill both sides" (Alfano memo of September 1986). The other account holder may, to this day, continue to await a rebilling to disgorge his windfall.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Gruntal & Company is liable for and shall pay to Claimant

- a) \$7,427 plus 10% interest from November 1, 1987, until paid; and
- b) \$825 as approximate compensation for tax consequences of this award.

2. Cross-respondents Sacks Securities and Richard Sacks are jointly and severally liable for and shall pay to Gruntal & Company an amount equal to 25% of the total award paid to Claimant by Gruntal & Company.

3. The parties shall each bear their respective costs including attorney's fees.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the National Association of Securities Dealers shall refund the \$200 hearing session deposit previously paid by Claimant. Forum fees are assessed as follows:

Gruntal & Company:

3 sessions x \$200/session	=	\$600
Credit for hearing session deposit	=	<u>300</u>
Amount Due	=	\$300

Richard Sacks:

1 session x \$200/session	=	\$200
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All fees are payable to the National Association of Securities Dealers, Inc.

Joanna Leighton
Joanna Leighton

DATE SERVED: 06/1/92

Date of Decision: 5-21-92