

PUBLIC

NASD

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Florence R. Klein (t/a K/K Enterprises)

vs.

Case #
90-03308

Name of Respondent

Gruntal & Co., Inc.

REPRESENTATION

For Claimant: Sol H. Weiss, Esq. of the law firm of Anapol, Schwartz, Weiss and Schwartz, P.C.

For Respondent: David F. Abernethy, Esq. of the law firm of Drinker Biddle & Reath.

CASE INFORMATION

Statement of Claim filed on: November 11, 1990.

Amended Statement of Claim filed on: October 18, 1991.

Claimant's Submission Agreement signed on: November 16, 1990.

Statement of Answer filed by Respondent, Gruntal & Co., Inc. on: May 17, 1991.

Response to Amended Statement of Claim filed on: November 6, 1991.

Respondent's Submission Agreement signed on: April 1, 1991.

HEARING INFORMATION

Hearing Dates/Sessions: January 24, 1992, 2 Sessions.
February 5, 1992, 2 Sessions.
March 4, 1992, 2 Sessions.
March 5, 1992, 1 Session.
March 6, 1992, 2 Sessions.
March 17, 1992, 2 Sessions.
April 2, 1992, 2 Sessions.

Hearing Location: National Association of Security Dealers, Inc. ("NASD")
Offices located in Philadelphia, PA.

CASE SUMMARY

Claimant alleged that on October 27, 1986 Respondent committed to underwrite, without credit enhancement, Industrial Revenue Bonds to finance a real estate project Claimant was developing in conjunction with the Philadelphia Authority for Industrial Development ("PAID"). Claimant further alleged that Respondent agreed to complete the underwriting prior to December 31, 1986 since there could be no further issuance of such tax exempt bonds after that date. Claimant further alleged that in reliance upon Respondent's commitment, Claimant obtained an Urban Development Action Grant ("UDAG") by the City of Philadelphia as approved by the Federal Government, purchased real estate and obtained the necessary community approvals for construction. Claimant further alleged that on December 5, 1986 Respondent breached the commitment when Respondent imposed the condition on the underwriting that Claimant obtain credit enhancement in the form of a letter of credit to secure the debt. Claimant further alleged that as a result of Respondent's breach, Claimant was forced to secure alternative financing on short notice and suffered damages in the form of increased costs for obtaining credit enhancements, extraordinary underwriting and printing fees, and additional interest charges. Finally, Claimant alleged that as a result of the breach the City of Philadelphia was required to make payments to the Philadelphia National Bank for reimbursement on Claimant's letter of credit and a guarantee of interest and that Claimant had to indemnify the City for such payments.

Respondent maintained that it made no binding commitment to Claimant to underwrite bond financing for the project and that the alleged commitment letters were provided to Claimant to facilitate Claimant's efforts to obtain an UDAG grant for the project and were understood by both parties not to be binding. Respondent further maintained that credit enhancement in the form of letters of credit were contemplated well before December 1986 and that the alleged commitment letters could not be binding because they lacked a number of essential terms and conditions. Respondent further maintained that even if there had been a commitment it was not liable to Claimant because: the commitment would have only been enforceable by PAID not Claimant; a precondition to the underwriting, receipt of a UDAG grant was not satisfied; Respondent would have been entitled to underwrite the bonds after December 31, 1986 and so could not have breached a commitment to underwrite before that date. Respondent further maintains that it is not liable for expenses incurred by Claimant because they were normal expenses associated with underwriting and could have been incurred had Respondent been the underwriter, the additional costs were not determinable and any increased costs incurred by Claimant were the result of Claimant's lack of diligence in planning the project. Respondent further maintained that it was not responsible for any payments Claimant made to the City of Philadelphia as a result of Claimant's indemnification agreement because the payments resulted from defaulted payments by Claimant.

RELIEF REQUESTED

Claimant requested total damages of \$1,866,537.80, consisting of:

- a. \$318,859.00 for expenses associated with acquiring credit enhancements including letter of credit fees, PGIC insurance, legal fees and establishment of an escrow fund,
- b. \$163,583.00 for expenses incurred as a result of the last minute change in underwriters.
- c. \$715,536.00 for payments Claimant is required to make to the City of Philadelphia pursuant to an indemnification agreement with the City of Philadelphia.
- d. \$667,650.00 for additional interest charges.

Respondent requested that the claim be dismissed and an Award be entered in its favor and specifically requested that the entire cost of the proceeding be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

The parties wanted to submit post hearing briefs and the panel allowed three post hearing submissions: a post hearing brief from both Claimant and Respondent and a reply to Respondent's brief from Claimant. Claimant submitted its post hearing brief on April 2, 1992, Respondent submitted its post hearing brief April 15, 1992 and Claimant submitted its reply to Respondent's brief on April 27. The Respondent submitted a reply to Claimant's last submission on May 1, 1992 and requested that the panel consider this submission in making its decision. The panel declined to accept the May 1, 1992 submission by Respondent.

AWARD

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

1. Respondent is liable to Claimant for three hundred three thousand two hundred and fifty dollars, \$303,250.00.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1. Filing fee of \$250.00 is assessed against Respondent.
2. Respondent is further assessed \$1,000 for postponement of the October 22, 1991 hearing, which has been paid.
3. Forum fees in the amount of \$13,000.00 for 13 hearing sessions are assessed against Respondent. Therefore, the total fees due by Respondent are \$13,250. Respondent shall satisfy this assessment by reimbursing Claimant \$1,000.00 which Claimant deposited and by remitting the balance, \$12,250.00 to the NASD.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrator's Signature
Name



Arnold Linsky
Public Arbitrator

Date of Decision: July 6, 1992

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Concurring Arbitrator's Signature
Name


John H. Carroll, Esq.
Chairperson - Public Arbitrator

Date of Decision: July 6, 1992

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Concurring Arbitrator's Signature

Name


H. Payson Brickley
Industry Arbitrator

Date of Decision: July 6, 1992