

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Sandra M. Misjak

No. 91-00779

Name of Respondents

Gruntal & Company, Inc.
David Geschke

REPRESENTATION OF PARTIES

For Claimants: Lane Gensberg, Esq. and Carlo E. Poli, Esq. of Stone, McGuire & Benjamin.

For Respondents: Hiram D. Gordon, Esq. of Janvey, Berglas & Gordon.

CASE INFORMATION

Statement of Claim filed: March 11, 1991.

Claimant's Submission Agreement signed on: March 4, 1991.

Joint Statement of Answer filed by Respondents, Gruntal & Company, Inc. and David Geschke on: May 10, 1991.

Respondent Gruntal & Company, Inc.'s Submission Agreement signed on: May 8, 1991.

Respondent David Geschke's Submission Agreement signed on: July 19, 1991.

HEARING INFORMATION

Pre-Hearing conference held: October 16, 1991. 1 session.

Hearing date: February 25, 1992. 2 sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Sandra M. Misjak ("Claimant") alleged breach of contract, unauthorized transactions, violation of Article III, Paragraph 2152, Section 2 of the NASD Rules of Fair Practice, and violation of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. Claimant's claims arose out of a sale of 2,600 shares of Meade Corporation stock from Claimant's individual I.R.A. account with Respondent Gruntal & Company, Inc. ("Gruntal"), and the purchase of 10,000 shares of Alliant stock by Respondent David Geschke ("Geschke").

On or about June 14, 1990, Claimant opened her own separate I.R.A. account at Gruntal which included, among other investments, 5,000 shares of Meade Corporation stock. Claimant alleged that she never gave Gruntal or Geschke, or her husband, Ronald Misjak, the authority to initiate trades in her separate I.R.A. account without Claimant's specific approval. On or about June 22, 1990, Geschke caused the sale of 2,600 shares of Meade Corporation stock, and purchased 10,000 share of Alliant stock with the proceeds from the Meade sale. Claimant alleged that these trades had never been authorized, or approved by her. Claimant went on to state that Gruntal was a market maker in Alliant stock, and Gruntal and Geschke failed to advise Claimant of this material fact prior to the Alliance transaction.

Claimant further alleged that July 20, 1990, was the first time she had become aware of the unauthorized trades, and complained about the trades to Geschke's manager, Jim Cox, on July 23, 1990. Claimant had also demanded that her account be returned to the way it had been prior to the sale of the Meade stock. Claimant alleged that she had been assured that the matter would be resolved. After other conversations between Claimant and management at Gruntal, Jim Cox called the Claimant on August 16, 1990, and allegedly informed her of Gruntal's refusal to rectify the situation.

In their joint Statement of Answer, Respondents Gruntal and Geschke denied the allegations set forth in the Statement of Claim. Gruntal and Geschke went on to allege that the trade in question did not deviate from the established pattern of handling accounts with Geschke prior to his employment at Gruntal. All prior transactions were alleged to have been between Geschke and Ronald Misjak, and never with the Claimant on her own. Gruntal and Geschke stated that Geschke had contacted Ronald Misjak in July of 1990 about the Alliant stock. Mr. Misjak allegedly told Geschke to purchase 10,000 shares of Alliant, and also told Geshke to sell the Meade shares to pay for the transaction. A short time later, Claimant had called Geschke and told him to liquidate the account, and then called him back and rescinded the order. Lastly, it was alleged that Geschke advised selling the Alliant shares on July 18, 1990, at a price of five and one-half (5 1/2). It was allegedly not until August 16, 1990, that

Claimant ordered the sale of the Alliant shares at two and three-quarters (2 3/4).

RELIEF REQUESTED

Claimant requested that the arbitrators enter an award in her favor and against the Respondents, jointly and severally, as follows:

1. The sum of \$56,125.00 for actual damages; plus
2. Interest at the rate of 10 percent per annum from the date of the loss (August 28, 1990) to the date of the award; plus
3. Punitive damages in the sum of \$10,000.00; plus
4. Reasonable attorney's fees; plus
5. Claimant's forum fees and any other fees for bringing this arbitration; plus
6. Claimant's costs in bringing this arbitration.

Respondents Gruntal and Geschke requested that Claimant's Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Gruntal and Geschke had filed a joint Statement of Answer on May 10, 1991, which contained a Third-Party Claim against Ronald Misjak. The Third-Party Claim was based on allegations that all authorizations for the purchase and/or sale of securities came directly from Claimant's husband, and Respondents Gruntal and Geschke sought indemnification from Mr. Misjak. Respondents had also stated that the NASD had jurisdiction over Ronald Misjak due to an account agreement he had signed with Respondent Gruntal. After due consideration, and deliberation, the Director of Arbitration denied the Third-Party Claim because the account at issue in this arbitration had been determined to be the individual account of the Claimant, Sandra M. Misjak. Therefore, the account agreement signed by Ronald Misjak for his own account could not be used to initiate a Third-Party Claim against him.

On December 17, 1991, Claimant moved for a default judgement against Gruntal and Geschke because of : (1) the Respondent's alleged failures to comply with Section 32 of the NASD Code of Arbitration Procedure; (2) Gruntal and Geschke's failure to comply with stipulations by their counsel at a pre-hearing conference that Respondents Gruntal and Geschke would comply with certain information requests; and (3) Gruntal and Geschke's failure to comply with an order issued by the panel on November 18, 1991, ordering compliance with Claimant's information requests. After review of responsive documents from both parties, and deliberation, the panel denied Claimant's motion for default judgement. Claimant had also made a motion for attorney's fees which the panel took under advisement to be ruled on at the hearing of the above-captioned arbitration.

On February 13, 1992, Respondents Gruntal and Geschke renewed their motion to add Ronald Misjak as a Third-Party Respondent. As the basis for their motion, Respondents Gruntal and Geschke referred to their Statement of Answer which alleged Ronald Misjak's central role in managing Claimant's accounts, and his alleged critical role in connection with the transactions at issue in this arbitration proceeding. Respondents Gruntal and Geschke further asserted that the NASD had jurisdiction over Mr. Misjak because of his agreements to arbitrate contained in his own, and the joint customer agreements with Respondent Gruntal. After review of the motion and responsive documents from both parties, and deliberation, the panel denied Respondent's motion to add Ronald Misjak as a Third-Party to this arbitration.

On February 20, 1992, the panel issued a subpoena at the request of the Respondents requiring Ronald Misjak to attend the hearing; however, Ronald Misjak did not appear at the hearing. Claimant's counsel stated that he was in the hospital, and produced a note from a doctor to that effect. Respondents' counsel requested that a negative inference be drawn from Ronald Misjak's failure to appear, but did not request a continuance. After hearing arguments from both parties, and deliberation, the panel determined to draw whatever inference the panel concluded was appropriate about Mr. Misjak's absence after hearing the evidence.

At the hearing held on February 25, 1992, Respondents' counsel filed a motion in limine to exclude evidence pertaining to any account other than Claimant's I.R.A. Rollover account and the predecessor account to the I.R.A. Rollover account, the Tri-on Construction Retirement Trust. The panel received the motion in limine from Claimant, and also received a pre-hearing brief from the Respondents. After hearing argument from the parties, and deliberation, the panel denied Claimant's motion.

The parties have agreed that the Award in this matter may be executed by 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.

AWARD

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

1. Respondents Gruntal & Company, Inc. and David Geschke are jointly and severally liable for, and shall pay to the Claimant, Sandra Misjak the sum of \$42,700.00 plus the dividends paid on 2,600 shares of Mead Corporation common stock from June 22, 1990, to the date of service of this award. Claimant has the right to choose whether said amount is to be paid directly to her, or directly into her rollover I.R.A. account within 30 days of service of this award.

2. Claimant Sandra M. Misjak's request for attorney's fees relating to the continuance of this case is hereby denied and dismissed.

3. All other Claims contained in Claimant Sandra M. Misjak's Statement of Claim are hereby denied and dismissed.

4. Respondent Gruntal & Company, Inc. shall pay all forum fees of this arbitration as set forth more fully below.

FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 pre-hearing conference session X \$500.00 = \$500.00

2 hearing sessions X \$500.00 = \$1,000.00

Pursuant to Section 43 (c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$150.00, and shall retain the hearing session deposit in the amount of \$500.00 previously paid to the NASD by the Claimant.

Respondent Gruntal & Company, Inc. is liable for, and shall pay to Claimant, Sandra M. Misjak to sum of \$650.00 which constitutes

those forum costs previously paid to the NASD by the Claimant.

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, additional forum fees in the amount of \$1,000.00 are assessed against Respondent Gruntal & Company, Inc.

Pursuant to Sections 30 (b) and 43 (c) of the NASD Code of Arbitration Procedure, the NASD shall retain the postponement fee in the amount of \$500.00 previously paid to the NASD by Respondent Gruntal & Company, Inc.

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

CONCURRING ARBITRATORS

Dated:

March 19, 1992

/s/Robert C. Bonges
Robert C. Bonges
Presiding Chair
Public Arbitrator

March 23, 1992

/s/John R. Wylie
John R. Wylie
Public Arbitrator

March 26, 1992

/s/Thomas E. Haviland
Thomas E. Haviland
Industry Arbitrator

DATE OF SERVICE: _____