

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the Matter of the Arbitration Between

Name of Claimants

Anna M. DeSanto and Thomas J. DeSanto

93-03416

Name of Respondent

Gruntal & Co., Incorporated;
Alexandra Kunkle

REPRESENTATION

For Claimant: Anna M. DeSanto and Thomas J. DeSanto ("DeSanto") were represented by Marshall Patner, Esq of Marshall Patner & Associates, P.C. located in Chicago, Illinois.

For Respondent: Alexandra Kunkle ("Kunkle") was represented by J. William Holland, Esq. of Holland & Holland, in Chicago, Illinois and Kathleen H. Gorr, Esq. of Glen Ellyn, Illinois.

CASE INFORMATION

Statement of Claim filed: August 31, 1993

Claimant's Submission Agreement signed on: August 31, 1993

Claimant's Motion for Finding of Liability on Compensatory and Punitive Damages filed on: March 8, 1996

Response to Kunkle's Motion on Punitive Damages filed: March 26, 1996.

Statement of Answer filed by Respondent Kunkle on November 30, 1993.

Respondent Kunkle's Submission Agreement signed on: November 29, 1993

Response to Claimant's Motion on Liability filed on: March 11, 1996.

Motion for Ruling of Punitive Damages filed on: March 26, 1996.

Respondent Gruntal's Statement of Answer filed: November 30, 1996.

Respondent Gruntal's Submission Agreement signed on: November 30, 1993 by Robert Sablowsky, Executive Vice President, Gruntal & Co., Incorporated.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: April 1, 1996 for Two (2) session;
April 2, 1996 for One (1) session.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants alleged that Kunkle, while employed by or acting as an agent for Gruntal & Co., Incorporated, induced the DeSanto's to trade in unsuitable securities such as zero coupon STRIP Treasury bonds from May 1989 to April 1991. The losses which were incurred in the DeSanto's account resulted from Respondent's executing transactions in the accounts without prior authorization; the purchase of speculative securities which were unsuitable given Claimant's investment needs, objectives, available capital and financial ability to withstand the risk of transactions; the failure of Kunkle to advise the DeSantos of the risks associated with the investment transactions executed in the accounts; the failure of Gruntal to establish maintain, and enforce procedures enabling it to supervise properly; and Kunkle's misleading the DeSantos as to the value of the securities held in the accounts. Based upon the above allegations, the DeSantos asserted claims for Gruntal's failure to supervise; Federal securities fraud; breach of fiduciary duty; breach of contract; and common law fraud.

Respondent Gruntal divided the material allegations for the Statement of Claim, alleging that all transactions were discussed with the DeSantos in advance and the DeSantos never complained; no unusual trade or pattern of activity triggered any supervisory review in spite of a rigorous system to monitor each Client's account; and the DeSantos stayed with Kunkle even after she left Gruntal and went to Bear Sterns. In addition, Gruntal asserted several affirmative defenses.

Respondent Kunkle denied the material allegations of the Statement of Claim. In addition, Kunkle asserted several affirmative defenses, including the following:

1. The claims should be dismissed pursuant to the applicable Statute of Limitations;
2. The claims should be dismissed because of Claimants' failure to make reasonable steps to mitigate damages; and
3. The Claimants were on notice of every transaction through confirmations and monthly statements, yet never complained about the handling of the account.

RELIEF REQUESTED

Claimants requested an award for damages in excess of \$68,000.00 representing the losses incurred in the purchase and sale of the securities; punitive damages in the sum of \$68,000.00;

reasonable attorneys' fees, interest and costs incurred in this proceeding; and any other relief that the Panel deemed just.

Respondent Kunkle requested that the Arbitration Panel deny all claims for damages sought by Claimants, and all other relief sought by Claimants, and that she be awarded her costs and reasonable attorneys' fees incurred in connection with this matter.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated September 2, 1994, the NASD was informed that Respondent Gruntal had settled its dispute with Claimants and was no longer a party to the arbitration. All claims against Gruntal were dismissed.

On March 26, 1996 Claimant filed a Motion for a Ruling on Liability. After review of the Motion and all responses, the panel determined on March 19, 1996 that the Motion was denied. Respondent Kunkle asserted Motion for Ruling of Punitive Damages on March 25, 1996. After review of the Motion and Responses, the Panel denied the Motion on March 27, 1996.

On July 3, 1996, Respondent Kunkle filed a Motion to Reopen the Hearing citing new evidence. Claimants objected to reopening the hearing. After review of the arguments presented by the parties, the Panel determined that the Motion would be denied.

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.

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 Alexandra Kunkle is liable for and shall pay to the Claimants, Anna M. DeSanto and Thomas J. DeSanto the sum of \$68,000.00 in actual damages;
2. In addition, Respondent Alexandra Kunkle is liable for and shall pay to Claimants Anna M. DeSanto and Thomas J. DeSanto the sum of \$45,000.00 as punitive damages. In deciding to award punitive damages, the Panel considered the arguments of the parties, as well as the post-hearing submissions presented by the parties, and determined that authority existed for an award of punitive damages to the Claimants;

3. All costs of arbitration shall be borne by the party incurring the cost, including any attorneys' fees, except for those sums specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

FORUM FEES

Pursuant to Section 10332(c) [formerly Section 43(c)] of the Code of Arbitration Procedure, the following Forum Fees are assessed: Three (3) hearing sessions x \$750.00 per hearing session = \$2,250.00.

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$200.00 non-refundable claim filing fee and shall refund the \$750.00 hearing session deposit previously deposited by the Claimants, Anna M. DeSanto and Thomas J. DeSanto. Respondent Alexandra Kunkle is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$2,250.00 as forum fees.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

Concurring Arbitrators' Signatures
Name

Date

/s/ Larry Carlson, Esq.
Larry Carlson, Esq.
Public Arbitrator
Chairperson

September 16, 1996

/s/ David L. G. Jacobs
David L. G. Jacobs
Public Arbitrator

September 11, 1996

/s/ Carmen P. Michelotti
Carmen P. Michelotti
Industry Arbitrator

September 11, 1996

For NASD Use Only
Date of Decision: September 19, 1996