

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Lloyd H. & Penelope J. Emery

93-03979

Name of Respondents

Gruntal & Co., Inc.
Dennis Bodenstein

REPRESENTATION

Claimants Lloyd H. & Penelope J. Emery ("Claimants") were represented by Lloyd H. Emery

Respondents Gruntal & Co., Inc. ("Gruntal") and Dennis Bodenstein ("Bodenstein") were represented by Donald N. Cohen, Assistant General Counsel of Gruntal & Co., Inc., New York, NY

CASE INFORMATION

Statement of Claim filed on: September 29, 1993

Claimants' Submission Agreement signed on: September 22, 1993

Respondents' Motion to Dismiss and Joint Statement of Answer filed on: November 15, 1993

Gruntal's Submission Agreement signed on: November 10, 1993

Bodenstein's Submission Agreement signed on: November 12, 1993

HEARING INFORMATION

Pre-Hearing Telephone Conference: October 7, 1994 - one session

Hearing Date/Session: November 7, 1994, one session

Hearing Location: NASD District Office, Washington, DC

CASE SUMMARY

Claimants alleged that Bodenstein used high pressure sales tactics and violated required level of ethical fairness in the solicitation of the purchase of a security. Claimants alleged Respondents failed to meet their fiduciary responsibilities in that they neglected to determine whether or not such transaction was suitable. Claimants alleged that Respondents liquidated said transaction without Claimants' authorization. Claimants alleged that Respondents taped said conversations without Claimants knowledge and threatened to use the substance of said tape to discredit the Claimants. Claimants alleged that Bodenstein threatened Mr. Emery by stating to Mr. Emery's secretary that he was "coming to get him".

Respondents denied all allegations of wrongdoing alleged by the Claimants. Respondents maintained that Claimants suffered no losses as a result of the alleged wrongdoing. Respondents maintained that there exists no private right of action for alleged violations of National Association of Securities Dealers, Inc. ("NASD") and New York Stock Exchange, Inc. ("NYSE") rules.

RELIEF REQUESTED

Claimants requested punitive damages in \$20,000.

Respondents requested that the Statement of Claim be dismissed in its entirety and that costs and attorneys' fees be awarded to Respondents.

OTHER ISSUES CONSIDERED & DECIDED

Respondents asserted a Motion to Dismiss. Respondents alleged that Claimants incurred no losses as a result of the alleged wrongdoing. Respondent alleged that Claimants seek damages not for monetary losses suffered by them, but rather for regulatory violations that Claimants believe occurred. Respondents asserted that there is no private right of action for alleged violations of NASD, Inc. and NYSE, Inc. rules. Respondents maintained that Claimant is not entitled to punitive damages. Respondents maintained that under New York law, arbitrators have no power to award punitive damages.

Claimants maintained that they were entitled to be heard and confront Respondents for their unethical behavior.

AWARD

After considering the pleadings, and the Motion to Dismiss presented at the

hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Motion to Dismiss is granted and that Claimants request for punitive damages is denied in its entirety.
2. That the parties shall bear their own respective costs and attorneys fees except for as specifically addressed below.

OTHER COSTS

That Respondent Bodenstein's request to postponed the hearing scheduled for October 14, 1994 was granted and that Bodenstein shall pay to the NASD, Inc. \$400 to cover the costs of the postponement.

FORUM FEES

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

The Panel has determined to waive the costs of the pre hearing conference that occurred on October 7, 1994.

1 session x \$400 = \$400 in hearing session fees shall be borne by the Claimants. Claimants are entitled to apply their hearing session fee of \$400 previously deposited so that no further fees are due from Claimants and that their hearing session fee previously deposited shall be retained.

Concurring Arbitrators' Signatures
Name

Public/Industry

Paul A. Yates
Paul A. Yates

PUBLIC

Janet Stern Solomon
Janet Stern Solomon

Public

Alexander I. Heckman
Alexander I. Heckman

INDUSTRY