

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Thomas S. Gubanich

93-04295

Name of Respondent

Gruntal & Co., Inc.

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**REPRESENTATION**

For Claimant Thomas S. Gubanich ("Claimant"): Claimant appeared pro se.

For Respondent Gruntal & Co., Inc. ("Respondent"): Emilia M. DeMeo, Esq. of Gruntal & Co., Inc. located New York City, New York.

**CASE INFORMATION**

Statement of Claim filed: October 11, 1993.

Claimant's Submission Agreement signed on: June 29, 1993.

Statement of Answer filed by Respondent on: December 20, 1993.

Respondent's Submission Agreement signed by Robert Sablowsky, Executive Vice President of Gruntal & Co., Inc. on: December 20, 1993.

**HEARING INFORMATION**

Hearing Date: June 17, 1994 - One session.

Hearing Location: National Association of Securities Dealers, Inc. offices located in New York City, New York.

**CASE SUMMARY**

Claimant alleged that net commissions were owed Claimant as a salesman in

Respondent's newly organized mortgage-backed securities desk and compensatory damages were due Claimant for the misrepresentations made by the Respondent as to the employment opportunity in its firm.

Claimant alleged that he was employed by Respondent from May 2, 1992 to July 31, 1992 to work on its newly organized New York mortgage-backed securities desk. Claimant also alleged that his Series 7 registration had lapsed; that he was hired by the Respondent as a commission salesman to work for neither pay nor commissions until Claimant took the Series 7 test; and that upon passing his series 7 exam he would receive all back commissions. Claimant alleged that during the aforementioned time he produced gross commissions of \$12,812.50. Furthermore, Claimant alleged he was due \$3,203.13 from Respondent because of the commission rate of 25 percent.

In addition, Claimant alleged that as a matter of fair play he was hired by the Respondent on a long-term commitment basis. Claimant contended that because the mortgage-backed securities desk was newly started, Respondent acknowledged that it expected the sales personnel to take some time to build a customer base and as evidence of its commitment, Respondent indicated that analysts and traders would be hired. Claimant, who had been away from the business for more than two years while he completed graduate studies, contended that his customer list was stale. Claimant alleged that the time he spent in making calls and soliciting business represented valuable groundwork and an investment in Respondent's business. When Respondent terminated the mortgage-backed securities desk, Claimant contended that he was denied just compensation for his efforts.

Respondent maintained that at the time Claimant was hired, he was well aware that the mortgage-backed securities department was only recently formed and was in a start-up stage of operations. Based on Claimant's representations to reobtain his license, Respondent maintained that when Claimant was hired he was expected to help develop business and to work without compensation until he became registered again. Respondent contends that it was committed to developing the mortgage-backed securities desk, but that the department simply was unable to generate the business that the firm had hoped would materialize. Consequently, Claimant was laid off along with the other departmental employees.

Respondent further maintained that when the Claimant was laid off, he still had not obtained his securities license. Nevertheless, Respondent purportedly offered him \$4,000 in compensation which was in excess of the commission's Claimant alleged he was entitled to from Respondent. Moreover, Respondent contends that Claimant's allegation of compensatory damages as a matter of fair play is completely without merit and constituted overreaching.

#### **RELIEF REQUESTED**

Claimant requested awards against the Respondent as follows: (1) N e t

commissions in the amount of \$3,203.13, representing 25 percent of the gross commissions of \$12,812.50 generated by Claimant; (2) An amount of \$10,000 representing a figure equal to a reasonable annual draw of \$40,000 (a weekly total of \$769.23 x 13 weeks); and (3) A refund of the arbitration filing fee.

Respondent requested that the arbitration panel find in Respondent's favor as follows: (1) The statement of claim be dismissed in its entirety; and (2) Claimant be directed to accept Respondent's check for \$3,203.13 as compensation for his employment with the firm.

### **AWARD**

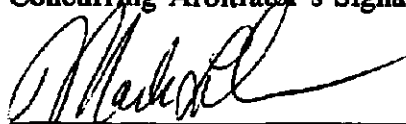
After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable and shall pay to the Claimant the sum of \$5,000.00.
2. All other claims be and hereby are dismissed.
3. Respondent be and hereby is liable and shall reimburse the Claimant \$800.00 representing forum fees previously deposited by the Claimant with the NASD.

### **FORUM FEES**

Pursuant to Section 44c of the Code of Arbitration Procedure, the arbitration panel has determined that the NASD shall retain the \$500.00 non-refundable filing fee and the \$300.00 hearing session deposit.

Concurring Arbitrator's Signature



Mark Lehman, Esq.  
Industry Arbitrator

Executed on:

Date of Decision: 6/27/94

Date of Decision: June 30, 1994

STATE OF *New York*  
COUNTY OF *New York*

On this *27<sup>th</sup>* day of *June*, 1994, before me personally appeared  
*MARK E. LEHMAN* known to me to be the individual described in and  
who executed the foregoing instrument and duly acknowledged to me that he/she  
executed the same.

*Nilda I. Rodriguez*

NILDA I. RODRIGUEZ  
Notary Public, State of New York  
No. 31-4876145  
Qualified in New York County  
Commission Expires November 24, 19*94*