

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Michael K. Sheeley

93-04971

Name of Respondent

G.N.A. Securities Co., Inc.

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REPRESENTATION

For Claimant Michael K. Sheeley ("Claimant") appeared Hayward Richard Pressman, Esq., sole practitioner located in New York, New York.

For Respondent G.N.A. Securities Co., Inc. ("Respondent") appeared T. Dennis George, Esq., of the law firm of George, Hull, Porter & Kohli, P.S. located in Seattle, Washington.

CASE INFORMATION

Statement of Claim filed: November 30, 1993.

Claimant's Submission Agreement signed on: November 30, 1993.

Statement of Answer filed by Respondent on: January 7, 1994.

Respondent's Submission Agreement signed on: January 7, 1994.

HEARING INFORMATION

Pre-hearing Conference:	October 5, 1994	-	One Session/ One Arbitrator
Hearing Dates/Sessions:	October 18, 1994	-	Two Sessions
	October 19, 1994	-	Two Sessions
	January 4, 1995	-	Two Sessions
	January 5, 1995	-	Two Sessions
	January 6, 1995	-	Two Sessions

January 23, 1995	-	Two Sessions
January 24, 1995	-	Two Sessions
January 25, 1995	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc., located in New York City, New York.

### **CASE SUMMARY**

Claimant alleged that he was employed by Respondent as a registered representative from January 1991 to March 1993 in Respondent's "networking program". Claimant alleged that, under the program, Respondent placed its employees at a branch office of Chase Manhattan Bank ("Chase") to sell annuities, mutual funds and other securities and the commissions were shared with Chase. Claimant further alleged that he was a dual employee of Chase and Respondent because he was expected to perform traditional duties of a registered representative as well as duties normally reserved to a bank employee.

Claimant alleged that many of the clients at the branch office, at which Claimant worked, were elderly customers, who were known to him and the employees of the bank. Claimant further alleged that sometimes these customers would come to the branch office to transfer securities and that as part of the transfer process certain forms had to be submitted which required the signatures of the transferor and transferee. In addition, Claimant alleged that these signatures had to be guaranteed with a signature guarantee stamp and that the signature guarantee stamp was usually signed by a bank employee. Claimant also alleged that on about twenty-five occasions, pursuant to authorization by Respondent and Chase employees, he signed the name of the bank manager to the signature guarantee form.

Claimant alleged that on or about March 10, 1993, Respondent terminated his employment because, according to Respondent, Claimant was not authorized to sign the bank manager's name to the signature guarantee form. Claimant alleged that his termination was wrongful and without just cause. Claimant further alleged that Respondent had a duty to supervise him and if Respondent had done so it would have prevented the alleged wrongdoing. In addition, Claimant maintained that, as a dual employee of Respondent and Chase, he had the authority to execute the signature guarantee form.

Claimant alleged that Respondent had a duty to inform, train and educate Claimant as to what acts it considered inappropriate or against company policy. Claimant further alleged that his actions were for the benefit of the customers and that he did not benefit monetarily or otherwise. Claimant also alleged that Respondent gave its implied consent to Claimant's actions because it knew or should have known that Claimant was engaging in this conduct and it failed to object.

Claimant alleged that Respondent filed a U-5 Termination Statement which stated the that Claimant "improperly affixed signature guarantees . . . and in doing so he forged the bank branch manager's signature." Claimant also alleged that Respondent told various employees of both Respondent and Chase that Claimant had "forged the bank manager's signature." Claimant alleged that the statements made by Respondent and those contained in the U-5 Termination Notice submitted by Respondent were and are untrue, false and defamatory and were made with reckless disregard or intent to injure Claimant. In addition, Claimant alleged that, as a result, he has been unable to obtain suitable employment in the securities industry.

Respondent denied all allegations of wrongdoing. Respondent admitted that Claimant had certain administrative duties, but denied that Claimant was authorized to sign the name of another to a signature guarantee form. Respondent also denied that it had impliedly consented to Claimant's actions.

Respondent maintained that it properly filed the U-5 Termination Notice upon Claimant's termination. Respondent denied that the statements made in the U-5 Termination Notice were untrue, false and defamatory or made with reckless disregard or intent to injure the Claimant.

As affirmative defenses, Respondent asserted that Claimant's claims are barred by the doctrines of waiver and estoppel, that the statements made in Claimant's U-5 Termination Notice are true, and that its statement of matters relating to Claimant's employment termination are privileged.

#### **RELIEF REQUESTED**

Claimant requested \$90,00.00 representing lost earnings from the date of Claimant's termination to the date of the hearing. At the hearing Claimant amended this amount to \$180,466.00. In addition, Claimant requested \$300,000.00 representing the loss of the value of Claimant's book of customers developed while employed by Respondent, \$1,000,000.00 representing damages sustained by virtue of the defamation, libel and slander of Claimant's reputation and \$500,00.00 representing the damages sustained by the Claimant by reason of the interference with the business relationship of Claimant. Claimant further requested an award ordering the Respondent to amend the Form U-5 Termination Notice and ordering that the original Form U-5 Termination Notice, dated March 18, 1993, with its accompanying DRP-5 be expunged from the CRD records of the National Association of Securities Dealers, Inc.

Respondent requested that the Statement of Claim be dismissed in its entirety.

#### **OTHER ISSUES CONSIDERED & DECIDED**

At the hearing, Claimant withdrew his requests for an award of \$300,00.00

representing the loss of value of the Claimant's book of customers developed while employed by Respondent and for an award of \$500,000.00 representing the damages sustained by Claimant by reason of the interference with the business relationship of the Claimant.

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

1. Respondent be and hereby is ordered to amend Claimant's U-5 Termination Notice as follows:

a) Question 12.

Question: Reason for Termination.

Answer: Mr. Sheeley executed bank signature guarantees on behalf of another, without authorization, under the mistaken belief that he was entitled to do so.

b) Disclosure Reporting Page (DRP-5), Question 7.

Question: What were the allegations against the individual?

Answer: Mr. Sheeley improperly affixed signature guarantees to 25 customer instruction documents to mutual funds. In doing so, he utilized the bank branch manager's signature.

c) Disclosure Reporting Page (DRP-5), Question 9.

Question: You may provide a brief summary of this event or proceeding.

Answer: During the absence of the manager of the bank branch where Mr. Sheeley conducted business for G.N.A., Mr. Sheeley signature guaranteed securities documents for 25 customers for their convenience. In doing so, he affixed the bank branch manager's signature on the signature guarantee stamp. No customers were harmed. No customers complained. The customer's wishes for the account changes have been verified.

2. All other claims against Respondent be and hereby are dismissed

in their entirety.

3. Each party shall bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$500.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

Pre-hearing conference (single arbitrator)	= \$ 300.00
16 hearing sessions x \$1,000.00	= <del>\$16,000.00</del>
	\$16,300.00

The forum fees are assessed against:

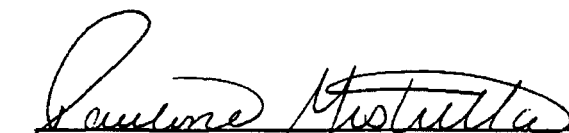
1. Claimant be and hereby is liable for the sum of \$8,150.00 representing one-half of the forum fees assessed. Claimant previously deposited a hearing session deposit in the amount of \$1,000.00, which shall be applied towards the forum fees assessed. Therefore, Claimant is liable and shall pay to the NASD the sum of \$7,150.00.
2. Respondent be and hereby is liable and shall pay to the NASD the sum of \$8,150.00 representing one-half the forum fees assessed.

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

**ARBITRATORS' SIGNATURES**

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George R. Freund  
Public Chairperson



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Pauline Mistretta, Esq.  
Industry Arbitrator

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Marilyn J. Salzman, Esq.  
Public Arbitrator

Date of Decision: February 28, 1995

STATE OF: New York

SS:

COUNTY OF: N.Y.

On this 23<sup>rd</sup> day of February, 1995, before me personally appeared **Pauline Mistretta, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.



**CATHERINE SAMMARTINO**  
Notary Public, State of New York  
No. 4985566  
Qualified in Suffolk County  
Commission Expires April 23, 1996

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1995, before me personally appeared known **George R. Freund** and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

\_\_\_\_\_

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1995, before me personally appeared **Marilyn J. Salzman, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

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**ARBITRATORS' SIGNATURES**

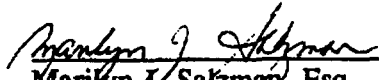
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George R. Freund  
Public Chairperson

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Pauline Mistretta, Esq.  
Industry Arbitrator

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Marilyn L. Salzman, Esq.  
Public Arbitrator

Date of Decision: February 28, 1995

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1995, before me personally appeared **Pauline Mistretta, Esq.** know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

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STATE OF:

SS:

COUNTY OF:

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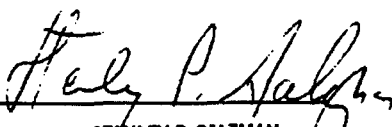
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STATE OF: *New York*

SS:

COUNTY OF: *Nassau*

On this *24<sup>th</sup>* day of *February* , 1995, before me personally appeared **Marilyn J. Salzman, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

  
STANLEY P. SALZMAN  
NOTARY PUBLIC, State of New York  
No. 8746425  
Qualified in Nassau County  
Commission Expires August 31, 19*96*

**ARBITRATORS' SIGNATURES**



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George R. Freund  
Public Chairperson

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Pauline Mistretta, Esq.  
Industry Arbitrator

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Marilyn J. Salzman, Esq.  
Public Arbitrator

Date of Decision: February 28, 1995

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1995, before me personally appeared **Pauline Mistretta, Esq.** know and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

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STATE OF: *New York*

SS:

COUNTY OF: *Monroe*

On this *23<sup>rd</sup>* day of *February*, 1995, before me personally appeared known **George R. Freund** and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

*Notary Public in and for the State of New York*  
My Commission Expires *Mar. 11, 1999*

*Edward M. Fallick*

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1995, before me personally appeared **Marilyn J. Salzman, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

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