

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Matthew Bradbury Marston

94-05056

Name of Respondents

Gruntal & Co., Inc.
Barry Richter

REPRESENTATION

For Claimant Matthew Bradbury Marston ("Claimant") appeared Jeffrey Liddle, Esq. of Liddle & Robinson located in New York, NY.

For Respondents Gruntal & Co., Inc. ("Gruntal") and Barry Richter ("Richter") appeared Catherine A. Ludden, Esq. of Morgan, Lewis & Bockius located in New York, NY.

CASE INFORMATION

The Statement of Claim was filed on December 2, 1994. Claimant filed a reply to Respondents' counterclaim on April 7, 1995. Claimant's Submission Agreement was signed on June 23, 1994.

A Joint Statement of Answer was filed by Respondents on March 16, 1995. Respondent Gruntal's Submission Agreement was signed on December 28, 1994. Respondent Richter's Submission Agreement was signed on December 22, 1994.

HEARING INFORMATION

Pre-Hearing Conference:	1 Session	October 10, 1995
Hearing Dates/Sessions:	2 Sessions	November 2, 1995
	2 Sessions	November 20, 1995
	2 Sessions	November 21, 1995
	2 Sessions	April 23, 1996
	2 Sessions	April 24, 1996
	2 Sessions	September 4, 1996
	2 Sessions	September 5, 1996

2 Sessions	October 1, 1996
1 Session	October 8, 1996

The Hearings were held at the NASD offices located in New York City, New York.

CASE SUMMARY

Claimant stated that Gruntal hired him, as senior vice president and mortgage trading manager, on May 1, 1993, to develop its institutional mortgage trading area and manage its mortgage backed securities trading desk. He stated he had previously been employed by Lehwald, Orsey & Peper, Inc as senior vice president and manager of mortgage backed securities trading and had earned \$200,000 in the first three months of 1993 and expected to earn total compensation of \$750,000 - \$1 million for 1993.

Claimant and Gruntal entered into a two-year agreement which provided a base salary of \$150,000 per year and 25% of the pre-tax profits on the first \$2 million earned by the institutional mortgage backed securities department and 30% of the pre-tax profits that exceeded \$2 million. Claimant contended that he anticipated earning \$2- \$3 million per year.

In October 1993, claimant alleged that Gruntal reaffirmed its commitment to him. At the same time, claimant stated he was approached by an executive recruiter for a position at a competing firm and that he was interested in the position if they could guarantee him \$1 million annual compensation. Claimant alleged that the firm continued to pursue him. According to claimant, when his supervisors learned of his contact with the competitor they convinced him to stay and assured him he would earn that much in the coming year.

Robert Sablowsky, Gruntal's manager of capital markets, allegedly submitted a budget and business plan for the mortgage backed department which estimated the department would generate a net income of \$8 million, which would have entitled claimant to \$2 - \$3 million.

Gruntal fired claimant on December 10, 1995 and filed a Form U-5 which stated "Marston, a proprietary trader, failed to follow firm procedure regarding pricing of mortgage backed securities for mark-to-the-market purposes." Claimant argued that Gruntal breached the compensation agreement by only paying him \$90,000. Marston claimed that Gruntal did not have a stated policy regarding pricing mortgaged backed securities and therefore had no basis for filing the Form U-5 as it did, which caused tremendous harm to his career. Claimant stated he has not found any employment in the securities industry.

Respondents generally denied the allegations of the statement of claim. Respondents maintained that Marston was expected to develop Gruntal's mortgaged back securities business, to supervise two junior traders, and to trade for Gruntal's proprietary account. Gruntal stated that also included in claimant's responsibilities was his duty to calculate, daily, a profit and loss statement

since the securities he was trading involved complex derivative instruments whose prices could not be obtained from pricing services or exchanges. Gruntal further maintained that these daily statements were to keep them apprised of the market value of their positions, as well as purchases and sales made by claimant.

Respondents alleged that in October 1993 they discovered that claimant was mis-marking his prices which were deteriorating as a result of the rising interest rate and therefore the daily statements did not accurately reflect the declining value of the positions. Respondents further charged that claimant actively attempted to conceal his mis-marking from respondents.

Gruntal alleged they had spot checked Marston's pricing with their own on four separate occasions and discovered that claimant was overpricing. They also maintained that they became concerned when they discovered that claimant had accumulated almost 1/3 of a particular issue, Federal Home Loan Mortgage Corporation MLTCL Mortgage PARTNCTFS GTD Series CL 1546 S.F. due 12/15/2021.

According to Gruntal, they confronted claimant with their findings and he admitted there was a loss. Gruntal allegedly directed claimant to sell a portion of the holding and to substantiate the loss on his daily statement. Gruntal argued that claimant did not sell the security as instructed but instead swapped it for another hard to sell security.

Respondents claimed they asked claimant to list all of the bid indications for his positions and discovered he did not list one that he had inventoried at \$73 but was worth \$63. On December 6, 1993 respondents asked claimant to resign or be fired.

Gruntal filed a counterclaim and stated that because of claimant's dishonest and irresponsible behavior they were unable to monitor his positions.

RELIEF REQUESTED

Claimant requested \$2.91 million for breach of a compensation agreement, plus interest, \$2 million in damages for defamation, an order directing Gruntal to amend claimant's Form U-5, attorneys fees and costs.

Respondents requested the panel dismiss the claims in their entirety, \$3 million plus interest, attorneys' fees and costs.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution

of the issues submitted for determination as follows:

1. Respondent Gruntal is hereby ordered to file an amended Form U-5 and delete the stated reason for permitted resignation and replace it with the following language:

Prior explanation deleted by order of the NASD
Arbitration Panel.

2. All remaining claims asserted by claimant are hereby denied.
3. All counterclaims asserted by Respondents be and hereby are dismissed in their entirety.
4. Each party shall bear its own costs.

FORUM FEES

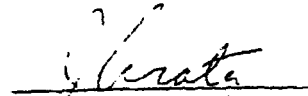
The panel has determined that the NASD shall retain the \$500.00 filing fee deposited by claimant and the \$500.00 filing fee deposited by respondents and pursuant to Section 44c of the Code of Arbitration Procedure have assessed the following forum fees:

1 Pre-Hearing Conference x \$300.00	= \$ 300.00
17 Hearing Sessions x \$1,500.00	= \$25,500.00
Less claimant's hearing session deposit	= \$ 1,500.00
Less respondents' hearing session deposit	= \$ 1,000.00
Total Outstanding Forum Fees	= \$23,300.00

The panel has determined that claimants shall bear one-half of the outstanding forum fees and that respondents shall jointly and severally bear one-half of the outstanding forum fees. Therefore claimant is liable and shall pay to the NASD the sum of \$11,650.00. Respondents are jointly and severally liable and shall pay to the NASD the sum of \$11,650.00.

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

ARBITRATORS' SIGNATURE




Joseph J. Arata, Esq.
Public Chairperson

Joseph E. DaGrosa
Industry Arbitrator

John J. Phelan, Esq.
Public Arbitrator

I, Joseph J. Arata, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Joseph J. Arata, Esq.

I, Joseph E. DaGrosa, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

Joseph E. DaGrosa

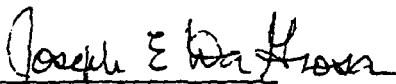
I, John J. Phelan, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.

John J. Phelan, Esq.

NASD Date of Decision: December 5, 1996

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Public Chairperson



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Industry Arbitrator

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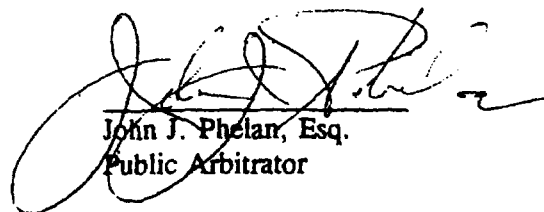
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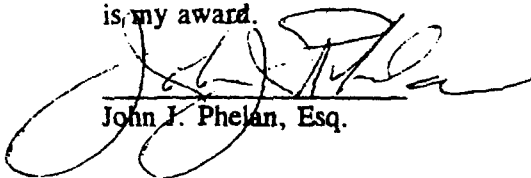
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