

971207

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Gerald P. Dulski

and

95-00995

Name of Respondent

Gruntal & Co., Inc.

Howard Silverman

Barry Richter

Robert Sablowsky

REPRESENTATION OF PARTIES

Gerald P. Dulski ("Claimant") was represented by Stanley M. Ackert, III of Blum, Gersen & Wood

Gruntal & Co., Inc. ("Respondent") was represented by Gregg Weiner of Fried, Frank, Harris, Shriver & Jacobs

Howard Silverman ("Respondent") was represented by Elkan Abramowitz of Morvillo, Abramowitz Grand Iason

Barry Richter ("Respondent") was represented by Loren Kieve of Debevoise & Pimpton

Robert Sablowsky ("Respondent") was represented by Loren Kieve of Debevoise & Pimpton

CASE INFORMATION

Claimant, Gerald P. Dulski, filed the Statement of Claim on or about February 24, 1995
Claimant's Uniform Submission Agreement was signed February 24, 1995.

Respondent, Gruntal & Co., Inc., signed the Submission Agreement on June 2, 1995
However, Gruntal & Co., Inc. failed to submit a Statement of Answer.

Respondent, Howard Silverman, filed the Statement of Answer on or about June 2, 1995.
Respondent signed the Uniform Submission Agreement on June 2, 1995.

Respondent, Barry Richter, filed the Statement of Answer on or about June 2, 1995. However, Barry Richter failed to execute a Uniform Submission Agreement.

Respondent, Robert Sablowsky, filed the Statement of Answer on or about June 2, 1995. Respondent signed the Uniform Submission Agreement on June 2, 1995.

HEARING INFORMATION

A pre-hearing conference was held on June 12, 1996.

The Arbitration Panel held Hearing Sessions on:

June 12, 1997	-	2 Sessions
June 25, 1997	-	2 Sessions
July 30, 1997	-	2 Sessions
September 17, 1997	-	2 Sessions
September 18, 1997	-	2 Sessions

for a total of 10 sessions.

CASE SUMMARY

Claimant alleged that in 1992 he was hired by Gruntal to the position of Senior (Vice President, Managing Director, Fixed Income. Accordingly, his responsibilities encompassed the administration function of the Municipal Bonds Department. In this position, Claimant stated that he was prohibited from implementing certain policies due to the special relationship between Vincent Mancaruso, a Gruntal Municipal Bond Trader, and Howard Silverman. Specifically, Claimant alleges that he was prohibited from requiring that traders take and pass the Series 53 as well as establishing a policy within the department that would address extremely low and off the market retail bond bids. Furthermore, Claimant alleges that when he attempted to terminate or transfer Vincent Mancaruso, for failure to comply with the new policies, he was told by Sablowsky that he, Claimant, would be terminated before Mancaruso in that Mancaruso had a special relationship with Silverman, an executive of Respondent Gruntal.

After checking into a trade executed by Mancaruso, for Silverman, Claimant stated that he was instructed by Sablowsky, his immediate supervisor, to stop checking into trades involving Silverman. Claimant alleges that subsequent to these meetings and the promotion of Mancaruso, without his knowledge, he was terminated. Claimant stated that he was told by Sablowsky that Silverman confirmed the decision to fire him. Claimant also speculated that his replacement was younger than he.

Claimant requested recovery from respondents for breach of contract, intentional tort and tortious interference with his contract. Furthermore, Claimant asserted that Respondent violated New York Executive Law sections 296 and 8-107.1(a) of the Administrative Code of the City of New York.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant was hired to run Respondent's government agency and municipal bond desks in which claimant failed to satisfactorily perform his responsibilities. Respondent further alleged that Claimant did not achieve the level of profitability for the bond desks that he claimed he could achieve when he was hired. Specifically, Respondent provided that Claimant was hired to increase underwriting in the fixed income area as well as develop a profitable public finance department. According to Respondent, Claimant failed to achieve these goals because he lacked the skill and experience necessary to manage the fixed income department. In addition, Respondent stated that complaints had been received with respect to Dulski's management ability.

As to the age discrimination issue, it is Respondents position that because Claimant was terminated within two years of his start date age was not a determinative factor in the decision to terminate Claimant. Respondent further provided that Claimant's position was eliminated after his termination and thus Claimant was not replaced with a younger person.

In addressing Claimant's allegation of improper bond purchases by Gruntal executives, Respondent asserted that these executives were charged fair prices. However, Respondent noted that the executives were not charged a sales commissions like the retail customers.

Respondent set forth the following defenses: failure to state a claim upon which relief can be granted; failure to mitigate alleged damages; and failure to provide facts supporting an award of punitive damages. Respondent requested that the Statement of Claim be dismissed with prejudice.

RELIEF REQUESTED

Claimant requested an award in the amount of \$4,000,000.00 in compensatory damages, for breach of contract, intentional tort, tortious interference with his contract and violations of New York Executive Law section 296 and section 8-107.1(a) of the Administrative Code of the City of New York.

Respondents denied the claims asserted against them and asked the panel to dismiss the matter with prejudice and to award them costs, attorneys' fees and such other relief as the Panel deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

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Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators have determined that Respondent has been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents Howard Silverman, Barry Richter, Robert Sablowsky and Gruntal & Co., Inc., received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Although Respondent, Gruntal & Co., Inc., did not file with NASD Regulation, Inc. Office of Dispute Resolution a Statement of Answer a properly executed submission to arbitration agreement was submitted. Furthermore, Respondent is required to submit to arbitration pursuant to Rule 10201 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

Respondent, Barry Richter, did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10201 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with NASD Regulation, Inc. Office of Dispute Resolution.

AWARD

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

1. All claims by Gerald P. Dulski against Barry Richter be and hereby are dismissed in their entirety.
2. Respondent Gruntal & Co., Inc., be and is hereby liable and shall pay to the Claimant the sum of \$116,605.76, plus 9% simple interest running from March 19, 1994, through the date of the award.
3. Claimant's request for punitive damages is hereby denied.
4. All other requests for relief be and hereby are denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$ 500.00 and shall retain as forum fees the hearing session deposit in the amount of \$1,000.00 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant Gerald P. Dulski. Forum fees are calculated at the rate of \$1,000.00 per hearing session and \$300 for each pre-hearing conference, if any. Pursuant to Rule 10332(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

NASD Regulation, Inc. Office of Dispute Resolution shall retain postponement fees in the amount of \$1,000.00 previously deposited by the claimant Gerald Dulski. Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

The arbitrators have assessed the following forum fees:

10 hearing sessions x \$1,000.00	= \$10,000.00
1 pre-hearing conference x \$300.00	= \$ 300.00
minus claimant's 1,000.00 deposit	(\$ 1,000.00)
Total Outstanding	= \$ 9,300.00

Claimant Gerald P. Dulski be and hereby are liable and shall pay to NASD Regulation, Inc., \$5,150.00, representing one-half of the forum fees assessed. Claimants previously deposited \$1,000.00 with NASD Regulation, Inc., therefore, Claimant shall pay to NASD Regulation, Inc., \$4,150.00 in satisfaction of forum fees.

Respondents Gruntal & Co., Inc., Howard Silverman and Robert Sablowsky be and hereby are jointly and severally liable and shall pay to NASD Regulation, Inc. The sum of \$5,150.00 representing one-half of the forum fees assessed. Therefore, Gruntal & Co., Inc., Howard Silverman and Robert Sablowsky shall pay to NASD Regulation, Inc. \$5,150.00 in satisfaction of outstanding forum fees.

Respondent Barry Richter shall bear no cost related to forum fees. Therefore, Respondent Richter shall pay to NASD Regulation, Inc., \$0.00. in satisfaction of forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$500.00.

ARBITRATOR'S SIGNATURES

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Robert D. Owen, Esq.
Public Chairperson

Charles A. Crocco, Esq.
Public Arbitrator

Michael Ross
Industry Arbitrator

Dated: December 2, 1997

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Robert D. Owen, Esq.
Public Chairperson



Charles A. Crocco, Esq.
Public Arbitrator

Michael Ross
Industry Arbitrator

Dated: December 2, 1997

Robert D. Owen, Esq.
Public Chairperson

Charles A. Crocco, Esq.
Public Arbitrator



Michael Ross
Industry Arbitrator



Michael Ross
Industry Arbitrator

Dated: December 2 1997