

**MSRB**  
MUNICIPAL SECURITIES RULEMAKING BOARD

NOV 18 1990

In the Matter of the Arbitration between

Claimants,

v.

ERWIN ALLEN PORGES and GRUNTAL & CO., INC.

Respondents.

AWARD

MS 90-58

The Undersigned, pursuant to section 31 of MSRB rule G-35, hereby state as follows:

**CASE SUMMARY**

Claimants allege, among other things, that Respondent Gruntal & Co., Inc. ("Respondent Gruntal") and its account executive, Respondent Erwin Allen Porges ("Respondent Porges"), who was Claimants' account executive at Respondent Gruntal (collectively "Respondents"), induced Claimants to purchase certain municipal securities through misrepresentation and withholding of material information. The bonds at issue, including Claimants' respective purchase dates, are as follows:

- 60,000 Mesa County, Colorado, SF MTG REV, 10.75%, due 12/1/99, on 11/17/89 (10M), 11/20/89 (25M) and 11/21/89 (25M);
- 60,000 Aurora, Colorado, SF MTG REV, dtd 9/1/83, due 9/1/2013, 10.75%, on 1/3/90 (25M), 1/4/90 (10M) and 3/8/90 (25M);
- 40,000 North Central, Texas, HSG FIN Corp, 11%, due 9/1/2010, on 12/7/89 (25M) and 2/7/90 (15M);
- 15,000 Eden Prairie, Minnesota, MLFM, 9%, due 8/1/2007, on 11/16/89;
- 25,000 Harris County, Texas, HSG FIN Corp, 9.875%, due 3/15/2014, on 4/5/89; and
- 25,000 Harris County, Texas, HSG FIN Corp, 9.25%, due 3/15/96, on 4/6/89.

Claimants allege that they advised Respondents that they were interested in purchasing investment grade municipal bonds that combined income and safety. Claimants allege that they would ask Respondents for specific information about the bonds that were offered prior to committing to purchase them: specifically information concerning the bond's rating, whether there were any

problems with the underlying mortgage pools, whether there were prior or potential defaults, the date of issuance, the size of the issue, the alternative minimum tax status, and any other pertinent information which could affect Claimants' investment decision. Claimants allege that Respondents represented the bonds as being investment grade when, in fact, the bonds had been either downgraded or non rated for a substantial period of time; in the case of the Mesa bonds, they were already in default. Claimants maintain that they would not have made these investments had the true facts not been misrepresented and withheld.

Respondent Porges denies making misrepresentations or omissions to Claimants with respect to the bonds. Respondent Porges argues, among other things, that Claimants are sophisticated investors who knew or should have known of the speculative nature and the risks of such investments. Respondent Porges argues that at all times he acted in good faith in seeking information for Claimants, showing bond offerings, and communicating information provided to him by his then employer, Respondent Gruntal, and its municipal bond department. Respondent Porges maintains that if, in fact, Claimants sustained any wrongful losses, then those losses were caused exclusively by the wrongful acts and/or negligence of Respondent Gruntal.

Respondent Gruntal denies that the alleged misrepresentations were made. Respondent Gruntal argues, among other things, that all of the information provided by Respondent Gruntal's municipal bond department to Respondent Porges was wholly accurate. Respondent Gruntal contends that if any material misrepresentations or omissions of fact regarding the bonds were made, they were wholly the result of the acts of Respondent Porges.

#### RELIEF REQUESTED

Claimants seek relief in the amount of \$48,642.29. Claimants also request a refund of their \$500 arbitration deposit, other costs in the amount of \$422.72, and punitive action or damages as the panel sees fit.

Respondent Porges requests that all of Claimants' claims against Respondent Porges be dismissed on the merits and with prejudice. Respondent Porges also requests, by way of a cross-claim, indemnity or contribution against Respondent Gruntal. Respondent Porges also requests his attorneys' fees, costs, and disbursements.

Respondent Gruntal requests that the statement of claim be denied in its entirety. Respondent Gruntal also requests that Respondent Porges's cross-claims be denied in their entirety and that Respondent Gruntal be awarded indemnity and/or contribution against Respondent Porges for any award rendered against it.

## AWARD

On May 2-3, 1991, and August 8-9, 1991, in New York, New York, the undersigned arbitrators heard the controversy between the parties set forth in a statement of claim filed with the MSRB on August 22, 1990, and in submissions to the arbitrators signed by Claimant on May 8, 1990; by Claimant on May 10, 1990; by Claimants and on October 24, 1990; and by Respondent Forges on November 20, 1990. Respondent Gruntal failed to file an executed submission agreement. The arbitration panel, having considered the pleadings, the testimony and the evidence presented at the hearing, has determined, in full and final resolution of the issues submitted for determination, as follows:

1. The claims of the Claimants shall be dismissed in their entirety and with prejudice.
2. Each of the parties shall bear its own costs, disbursements and attorneys' fees.
3. The panel recommends that the National Association of Securities Dealers, Inc., as the regulatory agency responsible for enforcing the rules of the MSRB as they pertain to securities firms that are its members, review and consider the panel's Complaint that Respondent Gruntal by its untimely, unsatisfactory, and unprofessional response failed to comply with an order for the production of documents issued by the panel in this matter on April 25, 1991. The panel recommends that a fine of \$10,000 be imposed upon Respondent Gruntal for its noncompliance.
4. Claimants' \$500 arbitration deposit shall be retained by the MSRB. In addition, Respondent Gruntal shall pay to the MSRB \$550 and Respondent Forges shall pay to the MSRB \$550, as forum fees, pursuant to MSRB rule A-16(2).

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Public Arbitrator

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Public Arbitrator

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Industry Arbitrator

Dated: 11/11/91

STATE OF *NEW YORK*  
COUNTY OF *NEW YORK*

SS.:

On this *14* day of *NOVEMBER*, 19*91*, before me personally  
appeared \_\_\_\_\_ to me known and known to me to be  
the individual described in and who executed the foregoing  
instrument and he duly acknowledged to me that he executed the  
same.

RUTH BERKOWITZ  
NOTARY PUBLIC, State of New York  
No. 03-4713668  
QUALIFIED IN BRONX COUNTY  
Commission Expires *APRIL 30, 1992*

*Ruth Berkowitz*

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

SS.:

On this *15* day of *November*, 19*91*, before me personally  
appeared \_\_\_\_\_ to me known and known to me to be the  
individual described in and who executed the foregoing instrument  
and he duly acknowledged to me that he executed the same.

DONNA M. SCHAEFER  
Notary Public, State of New York  
No. 4956036  
Qualified in Nassau & Suffolk Counties  
Commission Expires September 11, *1993*

*Donna M. Schaefer*

~~STATE OF~~ *CITY OF Washington*  
~~COUNTY OF~~ *DISTRICT of Columbia*

SS.:

On this *11th* day of *November*, 19*91*, before me personally  
appeared \_\_\_\_\_ to me known and known to me to be the  
individual described in and who executed the foregoing instrument  
and he duly acknowledged to me that he executed the same.

*Robert D. Grossman*

# AWARD

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rf

  
Robert B. Weintraub

  
John A. Falvey

  
Wendie L. Wachtel

Dated: 11/11/91