

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

Michael F. and Shirley Doherty,  
Debra Doherty,  
Michelle Noel and  
Conor McGrath

and

Case Number: 00-03697  
Hearing Site: Houston, Texas

Names of Respondents

Gruntal & Co., LLC, Matthew D. Mitchell  
Wachovia Securities, Inc. f/k/a Wheat First Union  
and f/k/a Wheat First Securities and  
Prudential Equity Group, LLC.

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**NATURE OF DISPUTE**

Customers v. Member Firms, Terminated Member and Associated Person

**REPRESENTATION OF PARTIES**

Michael F. Doherty, Shirley Doherty, Debra Doherty, Michelle Noel and Conor McGrath ("**Claimants**") were represented by Leslie Hyman, Esq., of Cox & Smith, Inc., of San Antonio, Texas.

Gruntal & Co., LLC ("**Gruntal**") was represented by Donald Cohen, Esq., of GCO Services, LLC, of New York, New York.

Matthew D. Mitchell ("**Mitchell**") appeared in pro per.

Wachovia Securities, Inc. f/k/a Wheat First Union and f/k/a Wheat First Securities ("**Wachovia**") was represented by Retta A. Miller, Esq., of Jackson Walker, LLP, of Dallas, Texas.

Prudential Equity Group, LLC ("**Prudential**") was represented by David I. Futter, Esq., of Prudential Securities, Inc., of New York, New York.

### CASE INFORMATION

The Statement of Claim was filed on or about August 24, 2000.

The Amended Statement of Claim was filed on or about January 24, 2001.

The Submission Agreements of Claimants Michael F. Doherty, Shirley Doherty, Debra Doherty and Michelle Noel were each signed on or about August 15, 2000.

The Submission Agreement of Claimant Conor McGrath was signed on or about January 23, 2001.

The Statement of Answer was filed by Respondent Gruntal & Co., LLC on or about December 7, 2000.

The Motion to Sever and, in the Alternative, Statement of Answer to the Amended Statement of Claim was filed by Respondent Gruntal & Co., LLC on or about February 26, 2001.

The Submission Agreement of Respondent Gruntal & Co., LLC was signed on or about November 13, 2000.

The Statement of Answer was filed by Respondent Matthew D. Mitchell on or about November 22, 2000.

The Submission Agreement of Respondent Matthew D. Mitchell was not received.

The Statement of Answer was filed by Respondent Wachovia Securities, Inc. f/k/a Wheat First Union and f/k/a Wheat First Securities on or about November 22, 2000.

The Motion to Sever, Dismiss and in the Alternative, Statement of Answer to the Amended Statement of Claim was filed by Respondent Wachovia on or about February 6, 2001.

The Submission Agreement of Respondent Wachovia Securities, Inc. f/k/a Wheat First Union and f/k/a Wheat First Securities was signed on or about September 12, 2000.

The Motion to Dismiss, Statement of Answer and Motion for Severance, or in the alternative, Motion for More Definite Statement of Claim was filed by Respondent Prudential Equity Group, LLC on or about April 3, 2001.

The Submission Agreement of Respondent Prudential Equity Group, LLC was signed on or about March 29, 2001.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, breach of contract, promissory estoppel, and violation of Article 17 of the Texas Business and Commerce Code, known as the Texas Deceptive Trade Practices Act. Claimants maintained several accounts at Prudential, Wachovia and Gruntal. Claimants alleged that they instructed Mitchell to take their accounts off margin and not to purchase any securities on margin without Claimants' approval. Claimants alleged that Mitchell failed to take the accounts off margin. Claimants asserted that Mitchell violated Claimants' instructions and began to excessively trade on an unauthorized and discretionary basis in the Claimants' accounts, purchasing highly speculative securities, and incurring significant margin debt. Upon Claimants' discovery of Mitchell's actions, Claimants asserted that Mitchell confessed his wrongdoing, and assured Claimants that they would not incur losses from the trades which would be booked as "errors". Claimants asserted that as a result of the failure to properly supervise Mitchell and the activity in Claimants' accounts, Claimants have been devastated financially.

Unless specifically admitted in its Answer, Respondent Gruntal denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Gruntal is not liable to Claimants, because Claimants ratified Respondent's actions; Gruntal is not liable to Claimants because of estoppel and laches; and Claimants failed to mitigate their damages.

Unless specifically admitted in its Answer, Respondent Prudential denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim is barred by the relevant statutes of limitations; Claimants are barred from bringing this action on the ground of laches; Claimants are barred from any recovery because they failed to mitigate their losses and Claimants do not allege their unsuitability claims with the required specificity;

Unless specifically admitted in its Answer, Respondent Wachovia denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants authorized and approved the transactions in the account; therefore Claimants should be estopped from contesting the trades at issue; Claimants' claims are barred by their own negligence; and Claimants assumed the risk associated with the securities in their accounts.

Unless specifically admitted in his Answer, Respondent Mitchell denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants' claims are barred by the applicable statutes of limitation; Claimants' claims are

barred by the doctrine of estoppel; and Claimants' claims are barred by their own respective culpable conduct.

### **RELIEF REQUESTED**

In their Statement of Claim, Claimants requested an award in the amount of:

Actual/Compensatory Damages	In excess of \$5,000,000.00
Punitive/Exemplary Damages	Unspecified
Other Costs	Unspecified
Attorney's Fees	Unspecified
Interest	Unspecified

At hearing, Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$3,300,000.00
Attorney's Fees/Legal Fees	\$ 260,000.00
Expert Witness Fees	\$ 46,000.00
Treble Damages	

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

Respondent Matthew D. Mitchell did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, and appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Claimants dismissed their claims against Respondents Wachovia Securities, Inc. f/k/a Wheat First Union and f/k/a Wheat First Securities, and Prudential Securities, Inc., with prejudice on or about August 12, 2002. The panel did not adjudicate any claims against these Respondents.

Respondents' Motions to Sever were granted as to Claimant Conor McGrath's claims. In 2002, the panel ordered Claimant McGrath to file a new claim. The panel did not adjudicate any further issues involving Claimant McGrath.

Gruntal & Co. filed for bankruptcy on October 29, 2002. The bankruptcy stay was lifted in or around April, 2004. Gruntal served notice of the bankruptcy filing on the panel on October 30, 2002. The panel adjourned the hearing at the Claimants' request. The hearing was resumed after the stay was lifted.

Any motions not previously ruled upon, are hereby denied.

Matthew Mitchell appeared at the hearing in person for the October, 2002 hearing dates. On or about May 3, 2004, Respondent Mitchell requested that he be allowed to appear telephonically at the June 23 – 24, 2004 hearing sessions. The panel granted Respondent Mitchell's request. Mitchell appeared by telephone on June 23, 2004 and advised the panel that he declined to participate in the hearing on June 24, 2004.

The panel has made the following findings:

1. The limited evidence received by the panel in this case indicates Mr. Mitchell acted without authorization, engaged in excessive trading (churning) and generally ignored industry rules and some of his client's instructions.
2. Gruntal failed to adequately supervise Mr. Mitchell's activities.
3. The Doherty's are clearly not blameless. They acquiesced in Mitchell's transgressions and failed to complain to Gruntal when he did not follow their instructions. Mr. Doherty then conspired with Mr. Mitchell to ensure Gruntal's liability.
4. We find shared responsibility in this case and we have adjusted the amount of the awards accordingly.

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 Dispute Resolution ("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.) Respondents, Gruntal & Co., LLC, and Matthew D. Mitchell, are jointly and severally liable for and shall pay to Claimants, Michael F. Doherty, and Shirley Doherty, the sum of \$69,700 in compensatory damages;
- 2.) Respondents, Gruntal & Co., LLC, and Matthew D. Mitchell, are jointly and severally liable for and shall pay to Claimants, Michael F. Doherty and Shirley Doherty, the sum of \$41,000 in attorney's fees pursuant to Texas law;

- 3.) Respondents, Gruntal & Co., LLC , and Matthew D. Mitchell, are jointly and severally liable for and shall pay to Claimant, Deborah Doherty the sum of \$108,800 in compensatory damages;
- 4.) Respondents, Gruntal & Co., LLC , and Matthew D. Mitchell, are jointly and severally liable for and shall pay to Claimant, Deborah Doherty, the sum of \$32,000 in attorney's fees pursuant to Texas law;
- 5.) Respondents, Gruntal & Co., LLC , and Matthew D. Mitchell, are jointly and severally liable for and shall pay to Claimant, Michelle Noel, the sum of \$91,800 in compensatory damages;
- 6.) Respondents, Gruntal & Co., LLC , and Matthew D. Mitchell, are jointly and severally liable for and shall pay to Claimant, Michelle Noel, the sum of \$27,000 in attorneys fees pursuant to Texas law;
- 7.) In light of the panel's decision granting Respondents' Motions to Sever, the panel did not adjudicate and claims brought by Claimant Conor McGrath;
- 8.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 9.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$600.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Prudential Equity Group, LLC,

Wachovia Securities, Inc. f/k/a Wheat First Union and f/k/a Wheat First Securities and Gruntal & Co., LLC .

Member surcharge	= \$3000.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$5000.00

### **Adjournment Fees**

Adjournment requested during these proceedings:

February 11-15, 2002, adjournment requested by Gruntal & Co.	= \$1200.00
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### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with Panel x \$1200.00	= \$3,600.00
Pre-hearing conferences: May 29, 2001	1 session
February 11, 2002	1 session
March 3, 2004	1 session

Sixteen (16) Hearing sessions x \$1200.00	= \$19,200.00
Hearing Dates: August 6, 2002	2 sessions
August 7, 2002	2 sessions
August 8, 2002	2 sessions
August 9, 2002	2 sessions
October 28, 2002	2 sessions
October 29, 2002	2 sessions
October 30, 2002	1 session
June 23, 2004	1 session
June 24, 2004	2 sessions

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Total Forum Fees	= \$22,800.00
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The Arbitration Panel has assessed \$11,400.00 of the forum fees jointly and severally to Michael F. Doherty, Shirley Doherty, Debra Doherty, and Michelle Noel.

The Arbitration Panel has assessed \$11,400.00 of the forum fees jointly and severally to Gruntal & Co., LLC and Matthew D. Mitchell.

### Fee Summary

Claimants, Michael F. Doherty, Shirley Doherty, Debra Doherty, and Michelle Noel, are jointly and severally liable for:

Initial Filing Fee	= \$600.00
Forum Fees	= \$11,400.00
Total Fees	= \$12,000.00
Less payments	= \$1,800.00
Balance Due NASD Dispute Resolution	= \$10,200.00

Respondent, Gruntal & Co., LLC, is liable for:

Member Fees	= \$8,600.00
Adjournment Fee	= \$1,200.00
Total Fees	= \$9,800.00
Less payments	= \$9,800.00
Balance Due NASD Dispute Resolution	.00

Respondents, Gruntal & Co., LLC, and Matthew D. Mitchell, are jointly and severally liable for:

Forum Fees	= \$11,400.00
Total Fees	= \$11,400.00
Less payments	= \$0.00
Balance Due NASD Dispute Resolution	= \$11,400.00

Respondent Prudential Equity Group, LLC, is liable for:

Member Fees	= \$8,600.00
Total Fees	= \$8,600.00
Less Payments	= \$8,600.00
Balance Due NASD Dispute Resolution	= \$0.00

Respondent Wachovia Securities, Inc. f/k/a Wheat First Union and f/k/a Wheat First Securities is liable for:

Member Fees	= \$8,600.00
Total Fees	= \$8,600.00
Less Payments	= \$9,200.00
Refund Due from NASD Dispute Resolution	= \$600.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.



**ARBITRATION PANEL**

James P. Hoefling - Public Arbitrator, Presiding Chair  
David G. Beerbower - Public Arbitrator  
Steven J. Balaban - Non-Public Arbitrator

Concurring Arbitrators:

/s/ James P. Hoefling  
James P. Hoefling  
Public Arbitrator, Presiding Chair

July 7, 2004  
Signature Date

/s/ David G. Beerbower  
David G. Beerbower  
Public Arbitrator

July 5, 2004  
Signature Date

/s/ Steven J. Balaban  
Steven J. Balaban  
Non-Public Arbitrator


July 6, 2004  
Signature Date

July 8, 2004  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

James P. Hoefling - Public Arbitrator, Presiding Chair  
David G. Beerbower - Public Arbitrator  
Steven J. Balaban - Non-Public Arbitrator

Concurring Arbitrators:

  
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James P. Hoefling  
Public Arbitrator, Presiding Chair

7-7-04  
\_\_\_\_\_  
Signature Date

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David G. Beerbower  
Public Arbitrator

\_\_\_\_\_  
Signature Date

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Steven J. Balaban  
Non-Public Arbitrator

\_\_\_\_\_  
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David G. Beerbower - Public Arbitrator  
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Public Arbitrator, Presiding Chair

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David G. Beerbower - Public Arbitrator  
Steven J. Balaban - Non-Public Arbitrator

**Concurring Arbitrators:**

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James P. Hoefling  
Public Arbitrator, Presiding Chair

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Signature Date

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David G. Beerbower  
Public Arbitrator

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Signature Date

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Steven J. Balaban  
Non-Public Arbitrator

7/6/04

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Signature Date

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Date of Service (For NASD office use only)