

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Roger Carlsten, (Claimant) vs. Oscar Gruss & Son, Inc. and Broadband Capital Management, LLC, (Respondents)

Case Number: 00-05493

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Roger Carlsten, hereinafter referred to as "Claimant": William A. Jacobson, Esq., Kaplan & Jacobson Inc., Providence, RI.

Respondent, Oscar Gruss & Son, Inc. ("Gruss"): Robert S. Churchill, Esq., McLaughlin & Stern, LLP, New York, NY.

Respondent, Broadband Capital Management, LLC ("Broadband"), did not appear at the hearings in this matter. Previously represented by: Brian H. Reis, Esq., Brian Reis & Associates, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: December 11, 2000.

Reply to Gruss' Counterclaim filed by Claimant on or about: March 5, 2001.

Claimant signed the Uniform Submission Agreement: December 7, 2000.

Statement of Answer and Counterclaim filed by Gruss on or about: February 20, 2001.

Gruss signed the Uniform Submission Agreement: February 9, 2001.

Statement of Answer and Motion to Dismiss filed by Broadband on or about: February 6, 2001.

Broadband signed the Uniform Submission Agreement: February 15, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: violation of Rhode Island securities law; offer and sale of unregistered securities; misrepresentations; breach of fiduciary duty; negligence; fraud; unsuitability; and violations of the rules and regulations of the NASD. Claimant's claim involved a private placement in Wheeled Electric Power Company.

Unless specifically admitted in its Answer, Gruss denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claims are barred by the Rhode Island statute of limitations, the documentary evidence consisting of Claimant's Subscription Agreement and client information form, the other provisions of Rhode Island law which except Gruss from any liability, and the fact that there is no demonstrable causation between the alleged violations and the alleged damage sustained by Claimant.

In its Counterclaim, Gruss asserted the following causes of action: Claimant knowingly or with reckless disregard has asserted a claim against Gruss for punitive damages based upon his allegation that Gruss' conduct was "tantamount to criminality", and Claimant has wrongfully and maliciously placed Gruss in the position of having to defend itself against a meritless claim.

Unless specifically admitted in his Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defense: as a matter of Rhode Island law, the sale of unregistered securities, or the sale of registered securities by means of fraudulent misrepresentations, constitutes conduct that is tantamount to criminality, and entitles the aggrieved party to punitive damages.

RELIEF REQUESTED

Claimant requested:

- a. Rescissionary and/or compensatory damages in the amount of \$120,000.00;
- b. Punitive damages, in an amount to be determined by the Panel, but not less than \$120,000.00;
- c. Interest at the rate of 12%;
- d. Costs, including reasonable attorneys' fees; and
- e. Such other relief as is just, including assessing all forum fees against Respondents.

In its Answer and Counterclaim, Gruss requested that it be awarded the reasonable costs and expenses of its defense in this proceeding, including its reasonable attorneys' fees.

In his Reply, Claimant requested that the Panel dismiss the Counterclaim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the hearings in this matter, Claimant entered into a Stipulation of Settlement with Broadband, thereby withdrawing all claims against Broadband without prejudice.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Gruss be and hereby is solely liable for and shall pay to Claimant the sum of \$72,000.00 as compensatory damages, plus interest at the rate of 12% per annum accruing from December 12, 2000 until date of payment.
2. Gruss be and hereby is solely liable for and shall pay to Claimant the sum of \$2,000.00 in attorneys' fees as a sanction for Gruss' failure to comply with the Chairperson's pre-hearing discovery order.
3. Claimant's request for punitive damages is hereby denied.
4. Gruss' Counterclaim is hereby denied in its entirety.
5. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
Counterclaim filing fee	= \$ 500.00

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, Oscar Gruss & Son, Inc. and Broadband Capital Management, LLC are parties.

Oscar Gruss & Son, Inc.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Broadband Capital Management, LLC

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

December 4, 5 & 6, 2001, adjournment by Gruss	= \$1,125.00
---	--------------

Forum Fees and Assessments

The 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:

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
--	--------------

Pre-hearing conferences:	July 25, 2001	1 session
	November 30, 2001	1 session

Four (4) Hearing sessions x \$1,125.00	= \$4,500.00
--	--------------

Hearing Dates:	March 4, 2002	2 sessions
	March 5, 2002	2 sessions

Total Forum Fees	= \$6,750.00
------------------	--------------

1. The Panel has assessed \$3,375.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,375.00 of the forum fees against Gruss.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= <u>\$3,375.00</u>
Total Fees	= \$3,675.00
<u>Less payments</u>	= <u>\$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,250.00

2. Gruss be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$4,600.00
Adjournment Fee	= \$1,125.00
<u>Forum Fees</u>	= <u>\$3,375.00</u>
Total Fees	= \$9,600.00
<u>Less payments</u>	= <u>\$7,225.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,375.00

3. Broadband be and hereby is solely liable for:

<u>Member Fees</u>	= <u>\$4,600.00</u>
Total Fees	= \$4,600.00
<u>Less payments</u>	= <u>\$2,195.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2,405.00

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Brian M. Cullen, Esq.	-	Public Arbitrator, Presiding Chair
Alfred J.T. Rubega, Esq.	-	Public Arbitrator
William J. Driscoll	-	Industry Arbitrator

Concurring Arbitrators' Signatures



Brian M. Cullen, Esq.
Public Arbitrator, Presiding Chair

4-2-02
Signature Date

Alfred J.T. Rubega, Esq.
Public Arbitrator

Signature Date

William J. Driscoll
Industry Arbitrator

Signature Date

April 5, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

Brian M. Cullen, Esq.	-	Public Arbitrator, Presiding Chair
Alfred J.T. Rubega, Esq.	-	Public Arbitrator
William J. Driscoll	-	Industry Arbitrator

Concurring Arbitrators' Signatures

Brian M. Cullen, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Alfred J.T. Rubega, Esq.
Public Arbitrator

Signature Date

William J. Driscoll
Industry Arbitrator

Signature Date

April 5, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

Brian M. Cullen, Esq.	-	Public Arbitrator; Presiding Chair
Alfred J.T. Rubega, Esq.	-	Public Arbitrator
William J. Driscoll	-	Industry Arbitrator

Concurring Arbitrators' Signatures

Brian M. Cullen, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Alfred J.T. Rubega, Esq.
Public Arbitrator

Signature Date


William J. Driscoll
Industry Arbitrator


Signature Date

April 5, 2002

Date of Service (For NASD office use only)