

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimants
Eugene B. and Marlene A. Faust

Case Number: 01-00824

Name of the Respondents
Gruntal & Co., L.L.C.,
Thomas Fox, and
Ryan Beck & Company, LLC

Hearing Site: Pittsburgh, PA

Nature of the Dispute: Customer vs. Members and Associated Person

REPRESENTATION OF PARTIES

Claimants, Eugene B. and Marlene A. Faust, hereinafter collectively referred to as "Claimants", were represented by James R. Hankle, Esq., Sherrard, German & Kelly, P.C., Pittsburgh, Pennsylvania.

Respondents, Gruntal & Co., LLC ("Gruntal") and Thomas Fox ("Fox"), were initially represented by Charles L. Henderson, Esq., GCO Services, LLC, New York, New York. Respondent Fox represented himself at the hearing.

Respondent Ryan Beck & Company, LLC ("Ryan Beck") was represented by Joanne DiStaulo, Esq., Davidson, Manchel & Brennan, LLP, Northvale, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about February 16, 2001.

Claimants signed Uniform Submission Agreements on February 14, 2001 and on April 8, 2001. Claimants filed an Amended Statement of Claim on or about March 24, 2003.

Statement of Answer filed by Respondents Gruntal and Fox on or about May 10, 2001.

A representative of Respondent Gruntal signed the Uniform Submission Agreement on May 7, 2001.

Respondent Fox signed the Uniform Submission Agreement on April 16, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: churning; breach of contract; breach of fiduciary duty; conversion; fraud; misrepresentation; negligence; non-disclosures; failure to supervise; suitability; and, violations of New York and Pennsylvania consumer protection laws. The causes of action relate to the purchase and sale of various stocks.

Unless specifically admitted in his Answer, Respondent Fox denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; ratification, estoppel, acquiescence, and affirmance; laches; statute of limitations; failure to mitigate; assumption of the risk; and, waiver.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$ 132,552.00
Punitive Damages	\$ 750,000.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondent Fox in his Statement of Answer requested that the Arbitration Panel (the "Panel") dismiss with prejudice the Statement of Claim and award costs and other such relief as the Panel deems fair and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

On or about October 30, 2003 Respondent Gruntal filed a petition for protection in the United States Bankruptcy Court. Pursuant to that filing, all matters concerning Respondent Gruntal are indefinitely stayed.

On August 6, 2003, the United States District Court – Western Pennsylvania issued an order permanently staying this arbitration from proceeding against Ryan Beck. Respondent Ryan Beck filed neither a submission to arbitration nor an answer to the Statement of Claim with NASD Dispute Resolution.

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. Respondent Fox is liable to and shall pay to Claimants compensatory damages in the amount of one hundred ten thousand dollars (\$110,000.00) with simple interest at a rate of six percent (6%) beginning June 1, 1998 until the award is paid in full.
2. Respondent Fox is liable to and shall pay to Claimants punitive damages in the amount of three hundred thirty thousand dollars (\$330,000.00) pursuant to *Mastrobuono v. Shearson Lehman*, 514 U.S. 52, 63-64, 115 S. Ct. 1212, 131 L. Ed 2nd 76 (1995); *Zaretsky v. E.F. Hutton & Co.*, 509 F. Supp. 68, 77 (S.D.N.Y 1981) (willful, wanton, wrongful conduct, including churning and breach of fiduciary duty); *H & R Hats & Novelties, Inc., Respondent v. Citibank, NA and Graham & James, et al.*, 102 Ad 2nd 742, 477 N.Y.S. 2nd 9 (N.Y. App. Div. 1984).

3. Respondent Fox is liable to and shall pay to Claimants attorney's fees in the amount of ninety thousand dollars (\$90,000.00) pursuant to § 349 (h) of the N.Y. Consumer Protection Law.
4. Respondent Fox is liable to and shall pay to Claimants the sum of three hundred seventy-five dollars (\$375.00) as reimbursement for the claim filing fee.
5. The parties shall bear their respective costs, except as Fees are specifically addressed below.
6. Any and all relief not specifically addressed herein is denied in its entirety.

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 = \$ 375.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Ryan Beck was named as a party.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

December 4-6, 2002, adjournment requested by Respondent Fox = \$ waived

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with Panel @ \$ 1,200.00	= \$ 1,200.00
Pre-hearing conference: February 22, 2002 1 session	
Ten (10) Hearing sessions @ \$ 1,200.00	= \$12,000.00
Hearing Dates: September 10, 2002 2 sessions	
September 11, 2002 2 sessions	

September 12, 2002 2 sessions
March 1, 2004 2 sessions
March 2, 2004 2 sessions

Total Forum Fees = \$13,200.00

The Panel has assessed \$13,200.00 of the forum fees to Respondent Fox.

Fee Summary

1. Claimants are assessed and shall pay:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 1,575.00
Refund owed Claimants	= \$ 1,200.00

2. Respondent Ryan Beck is assessed and shall pay:

Member Fees	= \$ 6,100.00
Total Fees	= \$ 6,100.00
Less payments	= \$ 6,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Fox is assessed and shall pay:

Forum Fees	= \$13,200.00
Total Fees	= \$13,200.00
Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$13,200.00

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

ARBITRATION PANEL

Howard S. Averbach, Esq.	-	Public Arbitrator, Presiding Chairperson
Frank C. Fogl, Jr., Esq.	-	Public Arbitrator, Panelist
N. John Marinack	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures

Howard S. Averbach
Howard S. Averbach, Esq.
Public Arbitrator, Presiding Chairperson

3/26/04
Signature Date

Frank C. Fogl, Jr., Esq.
Public Arbitrator, Panelist

Signature Date

N. John Marinack
Non-Public Arbitrator, Panelist

Signature Date

March 29, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Howard S. Averbach, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Frank C. Fogl, Jr.
Frank C. Fogl, Jr., Esq.
Public Arbitrator, Panelist

3-27-04
Signature Date

N. John Marinack
Non-Public Arbitrator, Panelist

Signature Date

March 29, 2004
Date of Service (For NASD Dispute Resolution office use only)


Concurring Arbitrators' Signatures

Howard S. Averbach, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Frank C. Fogl, Jr., Esq.
Public Arbitrator, Panelist

Signature Date


N. John Marinack
Non-Public Arbitrator, Panelist

3-29-04
Signature Date

March 29, 2004
Date of Service (For NASD Dispute Resolution office use only)