

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Gary Bogner

and

01-01193
Troy, Michigan

Gruntal & Co., L.L.C., and
Thomas W. Fox

REPRESENTATION OF PARTIES

Gary Bogner ("Claimant") was represented by Andrew Stoltman, Esq., and Thomas A. Hargett, Esq., Maddox, Koeller Hargett & Caruso, Chicago, Illinois, and Indianapolis, Indiana.

Gruntal & Co., L.L.C ("Gruntal") and Thomas W. Fox ("Fox"), hereinafter referred to as "Respondents", were represented by Marshall L. Blankenship, Esq., Adduci, Dorf, Lehner, Mitchell & Blankenship, P.C., Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about May 3, 2001. The Submission Agreement of Claimant Gary F. Bogner was signed on or about March 1, 2001.

Respondents' Motion for More Definite Statement and Preliminary Statement of Answer was filed jointly by Gruntal and Fox on or about May 7, 2001. Claimant's Reply to Respondents' Motion for a More Definite Statement was filed on or about May 23, 2001.

The Submission Agreement of Respondent Gruntal was signed on or about May 3, 2001 by Donald Cohen, Deputy General Counsel for Gruntal & Co., L.L.C. The Submission Agreement of Respondent Fox was signed on or about April 24, 2001.

Claimant filed a Request for Leave to Amend Initial Statement of Claim on or about June 20, 2002. Respondents filed a Response to Claimant's Request for Leave to Amend Statement of Claim on or about June 24, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: violations under Michigan securities law, breach of contract, common law fraud and misrepresentation, breach of fiduciary duty and constructive fraud, violation of Rule 405 of the NYSE Rules, violation of Section 210 Conduct Rules of the NASD, violations of ASD Rule 2310 and Notice to Members 96-32 and 96-60, violation of Section 2120 Conduct Rules of the NASD, lack of supervision of Claimant's account and violation of Section 3010 Conduct Rules of the NASD, Respondent Superior, negligence and negligent supervision. The causes of action relate to various allegedly unsuitable investments in Claimant's account.

Unless specifically admitted in their Answer, Respondents Gruntal and Fox denied the allegations made in the Statement of Claim and asserted the affirmative defenses including the following: Claimant failed to state a cause of action against Respondents, the damages allegedly suffered by Claimant have no causal relationship with any act committed by Respondents or are legally attributable to Respondents, Claimant is estopped by his conduct from maintaining this cause of action against Respondents, the Statement of Claim is barred by the doctrines of ratification, affirmance, and laches.

RELIEF REQUESTED

Claimant requested an award against Respondents, jointly and severally, of actual damages in the amount of approximately \$143,976.00, in addition to lost interest, costs (including expert witness fees, attorney fees, accounting fees and expenses,) plus exemplary and/or punitive damages, and pre and post award interest at the statutory rate.

Respondents Gruntal and Fox requested that Panel dismiss the Statement of Claim against Respondents and award Respondents their costs for defending this claim and such other relief that the Panel deems fair and equitable.

OTHER ISSUES CONSIDERED & DECIDED

The Panel denied Respondents' Motion for More Definite Statement.

After oral arguments and the submission of briefs, the Panel denied Claimant's Request for Leave to Amend Initial Statement of Claim on or about June 28, 2002. The Panel ruled that as to Ryan, Beck & Co., L.L.C., the denial is 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. 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 & Company and Thomas W. Fox, are jointly and severally liable for and shall pay to Claimant, Gary Bogner, the sum of \$1.00 in compensatory damages;
- 2.) Respondents, Gruntal & Company and Thomas W. Fox, are jointly and severally liable for and shall pay to Claimant, Gary Bogner, the sum of \$25,000.00 in Attorneys' Fees pursuant to the Michigan Uniform Securities Act,

- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) That any relief not specifically enumerated, including punitive and exemplary damages, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$ 300.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Gruntal & Co., L.L.C.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,500.00

Adjournment Fees

Adjournment requested during these proceedings:

June 18-20, 2002, adjournment by Respondent Gruntal & Co., L.L.C. = \$ 1,125.00

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), 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 conference: June 26, 2001 1 session
February 19, 2002 1 session

One (1) Pre-hearing session with single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference: May 20, 2002 1 session

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

Hearing Dates: August 5, 2002 2 sessions
August 6, 2002 2 sessions

Total Forum Fees = \$7,200.00

The Arbitration Panel has assessed \$3,600.00 of the forum fees to Claimant Gary Bogner.

The Arbitration Panel has assessed \$3,600.00 of the forum fees jointly and severally to Respondents Gruntal & Co., L.L.C.

Fee Summary

Claimant, Gary Bogner is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,600.00
Total Fees	= \$ 3,900.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

Respondent, Gruntal & Company is liable for:

Adjournment Fees	= \$ 1,125.00
Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 3,600.00
Total Fees	= \$ 9,325.00
<u>Less payments</u>	= \$ 5,725.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Martin Brosnan, Esq. - Public Arbitrator, Presiding Chair

Joseph J. Burtell - Public Arbitrator

Michael J. Piku - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Martin Brosnan, Esq.

Martin Brosnan, Esq,
Public Arbitrator, Presiding Chair

09/06/02

Signature Date

/s/ Joseph J. Burtell, Esq.

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Public Arbitrator

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Date of Service (For NASD office use only)

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