

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Stephen A. Rogers, (Claimant) vs. Gruntal & Co., L.L.C. and Albert Fagan, (Respondents)

Case Number: 01-03039

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Stephen A. Rogers, hereinafter referred to as "Claimant", appeared *pro se*.

Respondents, Gruntal & Co., L.L.C. ("Gruntal") and Albert Fagan ("Fagan"), hereinafter collectively referred to as "Respondents": William D. Briendel, Esq., Greenberg Traurig, LLP, New York, NY. Previously represented by: Louis G. Santangelo, Esq., Assistant General Counsel, Gruntal & Co., L.L.C., New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: June 8, 2001.

Claimant signed the Uniform Submission Agreement: June 4, 2001.

Joint Statement of Answer filed by Respondents on or about: August 30, 2001.

Counterclaim filed by Gruntal on or about: August 30, 2001.

Gruntal signed the Uniform Submission Agreement: August 29, 2001.

Fagan signed the Uniform Submission Agreement: August 30, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; corporate negligence; mistreatment of an employee by an employer; and improper tax withholding.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to set forth a claim upon which relief can be granted; some or all of Claimant's claims are precluded by the applicable statute of limitations; any losses allegedly suffered by Claimant were caused by Claimant's own acts or omissions outside of the control of Respondents and were not caused by acts or omissions of Respondents; Claimant is barred from any recovery against Respondents because he ratified each act complained of and upon which recovery is

sought; Claimant is barred from recovery against Respondents by the doctrines of waiver, ratification, and acquiescence; Claimant is estopped by his own conduct from asserting the claims alleged in the Statement of Claim; Claimant failed to take reasonable steps to mitigate the alleged damages or losses suffered; and Claimant failed to exercise reasonable or ordinary care, caution, or prudence with respect to the matters alleged in the Statement of Claim.

In its Counterclaim, Gruntal asserted the following causes of action: breach of employment agreement; breach of Promissory Note; and indemnification and contribution for customer settlement.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$3,000,000.00, plus punitive damages in the amount of \$6,000,000.00.

Respondents requested that the Statement of Claim be dismissed, with prejudice, in its entirety.

In its Counterclaim, Gruntal requested:

- a. Principal and interest of \$29,757.12 due on the Promissory Note;
- b. Accrued interest on the Promissory Note at the default rate of 16% from September 8, 1999 until full payment;
- c. The balance due on the contractual agreement in the amount of \$2,598.18;
- d. The sum of \$25,000.00 representing contributions towards the customer settlement;
- e. The sum of \$17,500.00 as liquidated damages;
- f. All reasonable costs, expenses, and fees, including attorneys' fees; and
- g. Any and all additional relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

In Accordance with the Bankruptcy Order of United States Bankruptcy Court Southern District of New York, all actions against Gruntal & Co. are stayed.

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. Claimant's claims are hereby dismissed in their entirety.
2. Gruntal's Counterclaim is hereby dismissed in its entirety.
3. All other requests for relief are hereby denied.

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	= WAIVED
Counterclaim filing fee	= \$1,000.00

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. In this matter, Gruntal & Co., L.L.C. is a party.

Member surcharge	= \$3,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$5,000.00

Adjournment Fees

Adjournments requested during these proceedings:

June 18, 19 & 20, 2002, adjournment by Respondents	= \$1,200.00
July 10, 11 & 12, 2002, adjournment by Claimant	= \$1,200.00

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:

Three (3) Pre-hearing sessions with Panel x \$1,200.00		= \$3,600.00
Pre-hearing conferences:		
March 12, 2002	1 session	
March 28, 2002	1 session	
July 11, 2002	1 session	
Four (4) Hearing sessions x \$1,200.00		= \$4,800.00
Hearing Dates:		
October 8, 2002	2 sessions	
October 9, 2002	2 sessions	
Total Forum Fees		= \$8,400.00

1. The Panel has assessed \$4,200.00 of the forum fees against Claimant.
2. The Panel has assessed \$4,200.00 of the forum fees against Fagan.

Fee Summary

1. Claimant is solely liable for:

Adjournment Fee	= \$1,200.00
<u>Forum Fees</u>	<u>= \$4,200.00</u>
Total Fees	= \$5,400.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$5,400.00
2. Gruntal is solely liable for:

Counterclaim Filing Fee	= \$1,000.00
<u>Member Fees</u>	<u>= \$8,600.00</u>
Total Fees	= \$9,600.00
<u>Less payments</u>	<u>= \$9,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Adjournment Fee	= \$1,200.00
Total Fees	= \$1,200.00
<u>Less payments</u>	<u>= \$ 750.00</u>
Balance Due NASD Dispute Resolution	= \$ 450.00

4. Respondent Fagan is solely responsible for:

Forum Fees	= \$4,200.00
<u>Total Fees</u>	<u>= \$4,200.00</u>
Balance Due NASD Dispute Resolution	= \$4,200.00

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

1ARBITRATION PANEL

William B. Simmons	-	Public Arbitrator, Presiding Chair
Victor L. Zimmerman, Jr., Esq.	-	Public Arbitrator
Joan M. Confoy	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

William B. Simmons
William B. Simmons
Public Arbitrator, Presiding Chair

11/20/02
Signature Date

Victor L. Zimmerman, Jr., Esq.
Victor L. Zimmerman, Jr., Esq.
Public Arbitrator

Signature Date

Joan M. Confoy
Joan M. Confoy
Non-Public Arbitrator

Signature Date

November 20, 2002
Date of Service (For NASD Dispute Resolution use only)

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ARBITRATION PANEL

William B. Simmons	-	Public Arbitrator, Presiding Chair
Victor L. Zimmerman, Jr., Esq.	-	Public Arbitrator
Joan M. Confoy	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

William B. Simmons
Public Arbitrator, Presiding Chair



Victor L. Zimmerman, Jr., Esq.
Public Arbitrator

Signature Date

November 19, 2002

Signature Date

Joan M. Confoy
Non-Public Arbitrator

Signature Date

November 20, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

William B. Simmons	-	Public Arbitrator, Presiding Chair
Victor L. Zimmerman, Jr., Esq.	-	Public Arbitrator
Joan M. Confoy	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

William B. Simmons
Public Arbitrator, Presiding Chair

Signature Date

Victor L. Zimmerman, Jr., Esq.
Public Arbitrator

Signature Date


Joan M. Confoy
Non-Public Arbitrator

11/20/02
Signature Date

November 20, 2002

Date of Service (For NASD Dispute Resolution use only)