

N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION[®] OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
Suite 1000
Ft. Lauderdale, Florida 33301
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s))

Paul Pavilack)

Case No. 90-01442

Name of Respondent(s))

Gruntal & Co., Inc.)

George Barker)

Heard before the members of the Arbitration Panel:

Arthur J. Leibell, Esq.

Public

Guy D. Drake

Industry

Eduardo J. Palacio, Esq.

Public

REPRESENTATION

Claimant, Paul Pavilack ("Pavilack"), was represented by Russell L. Forkey, Esq. of the Law Offices of Russell L. Forkey.

Respondents, Gruntal & Co. ("Gruntal"), and George Barker ("Barker"), were represented by David S. Gorobetz, Esq. of Gruntal & Co.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on May 21, 1990. Claimant alleged that Respondents were liable for: fraud; breach of fiduciary duties; negligence; and, as it relates to Gruntal, negligent supervision. Claimant alleged that the losses he experienced in trading options were due to the fact that: Respondents failed to provide Claimant with information concerning his margin positions; the equity in the account was negligently allowed to deteriorate; Respondents failed to follow Claimant's instructions; and Respondents liquidated securities without authorization.

Respondents, Gruntal and Barker, filed a Statement of Answer with the NASD on July 13, 1990. Respondents, denied all allegations of wrongdoing and alleged that Claimant had complete control over the trading in his account; Claimant was aware of the risks involved; and any losses were due to the October 1987 market crash.

Respondent, Gruntal filed a counterclaim, and alleged that Claimant was liable for a debit balance in his margin account. Claimant filed a reply to the counterclaim on July 24, 1990 and denied liability and asserted affirmative defenses of: failure to state a claim; fraud and estoppel.

RELIEF REQUESTED

Claimant requested damages in the amount of \$81,785.44 plus punitive damages of \$80,000.00, plus interest, costs and attorney's fees and dismissal of the counterclaim.

Respondents requested dismissal of the claim. Respondent, Gruntal counterclaimed for damages in the amount of \$15,111.70 plus interest, costs and attorney's fees.

AWARD

On June 18, 1991 and August 27, 1991, in Fort Lauderdale, Florida, during hearings lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant; Pavilack, on May 16, 1990 and by Respondent, Barker, on July 12, 1990 and signed on July 13, 1990 by James L. Spingarn on behalf of Respondent, Gruntal.

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

1. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.
2. Respondents, Gruntal and Barker, are found not liable and, therefore, all claims against them are hereby dismissed.
3. Claimant's request for attorney's fees, costs and punitive damages is denied.
4. Claimant/Counter Respondent, Pavilack, is found liable, and shall pay to the Respondent/Counter Claimant, Gruntal, the amount of \$15,111.70.
5. Respondent/Counter Claimant's request for interest, costs, and attorney's fees is denied.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,400.00 (4 sessions x \$600.00 per session). Claimant is hereby assessed \$1,200.00 for which the NASD shall retain the \$800.00 previously deposited in partial satisfaction thereof. Respondent, Gruntal, is hereby assessed \$1,200.00 payable to the National Association of Securities Dealers, Inc. Additionally, Respondent, Gruntal, is assessed the \$500.00 non-refundable filing fee, payable to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

None.

Concurring Arbitrator(s) Signature(s)

/s/
Arthur J. Leibell, Esq.

/s/
Eduardo J. Palacio, Esq.

/s/
Guy D. Drake

Date of Decision: September 20, 1991