

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Arlina Angel

91-00457

Name of Respondents

Gruntal & Co., Inc.
Carl Nicola

REPRESENTATION

For Claimant Arline Angel ("Claimant"): Susan N. Perkins, a sole practitioner.

For Respondents Gruntal & Co., Inc. ("Gruntal") and Carl Nicola ("Nicola"): W. Reece Bader, of Orrick, Herrington et al.

CASE INFORMATION

Motion to Bar filed: May 10, 1992.

Statement of Claim filed: March 27, 1991.

Claimant's Submission Agreement signed on: January 29, 1991.

Joint Statement of Answer filed by Respondents on: June 3, 1991.

Respondent Gruntal's Submission Agreement signed on: May 10, 1991.

Respondent Nicola's Submission Agreement signed on: February 11, 1992.

HEARING INFORMATION

Pre-Hearing Conference: December 2, 1991/1 session/1 arbitrator

Hearing Dates/Sessions: February 11, 1992/2 sessions/3 arbitrators
February 12, 1992/2 sessions/3 arbitrators
March 9, 1992/2 sessions/3 arbitrators
April 10, 1992/2 sessions/3 arbitrators
July 8, 1992/2 sessions/3 arbitrators
July 9, 1992/2 sessions/3 arbitrators
July 10, 1992/2 sessions/3 arbitrators
August 7, 1992/2 sessions/3 arbitrators
August 24, 1992/1 session/3 arbitrators
August 26, 1992/2 sessions/3 arbitrators
September 9, 1992/2 sessions/3 arbitrators

Hearing Location: NASD, Inc., New York, NY.

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Claimant alleged that prior to her husband's death he maintained, with Nicola, a securities account for which he, the decedent, served as trustee jointly with Claimant and three (3) tax deferred securities accounts of which Claimant was not an owner. Claimant alleged her husband and Nicola did all the investing and she was not involved. Claimant alleged she maintained her own account and an IRA account with Nicola and invested on the advice of Nicola. Claimant alleged that upon her husband's death the distribution of the trustee account was placed in Claimant's securities account (at the solicitation of Nicola). Claimant alleged Nicola solicited her to open an IRA Rollover account with funds that were distributed to her from her husband's tax deferred accounts. Claimant alleged she informed Nicola and that he knew and understood her conservative investment objectives and agreed to these limitations. Claimant alleged Nicola sold the existing securities and invested in limited partnerships, junk bond funds and other unsuitable securities. Claimant alleged Nicola engaged in unauthorized trading; intentionally damaged Claimant by defrauding her in connection with her securities accounts; ignored her objectives and instructions; and churned her accounts.

Claimant alleged Gruntal defrauded and breached its regulatory and fiduciary duties to Claimant by failing to supervise Nicola; permitted Nicola to make investments that were unsuitable for Claimant; permitted Nicola to exercise discretion in Claimant's accounts, in the absence of written authorization; and permitted Nicola to effect transactions in Claimant's accounts by fraudulent means. At the close of the hearings, Claimant was permitted by this arbitration panel to amend her claim and include a claim of violation of the "RICO" statutes.

Respondents alleged Claimant's pattern of trading and product mix was in response to redefined investment objectives agreed upon after her husband's death. Respondent asserted that Claimant's investment objectives of increased taxable income had been properly executed and that Claimant was aware of increased investment risks and the necessity of some additional trading activity to effectuate her objectives. Respondents maintained the commissions generated by the post-December 1986 trading were reasonable and the accounts continued to receive interest and dividend income after December 1, 1986. Respondents asserted Claimant received monthly account statements and never complained until this claim was filed. Respondents stated Claimant's losses occurred because of trades and sales made after the closing of Claimant's accounts with Respondents and had Claimant followed the Respondents' investment advice and program she would have suffered no damages. Respondents further asserted Claimant earned a profit of \$132,755.00 while the account was with Gruntal, while at the same time drawing \$400,000.00 from the accounts.

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Finally, Respondents alleged Gruntal fulfilled its regulatory and fiduciary duties to Claimant and exercised proper compliance oversight and supervision of Nicola. Respondents stated Gruntal did not permit Nicola to act in violation of applicable law or breach his fiduciary duty.

RELIEF REQUESTED

Claimant requested: actual damages in the amount of \$483,447.09; punitive damages in the amount of \$1,029,738.90; interest from December 1986 to the date of the Award at the rate of nine (9%) percent in the amount of \$1,504,185.90; interest from the date of the Award at the rate of nine (9%) percent to date of payment; attorneys' fees; and expert witness fees.

Respondents requested: they denied the allegations of the Statement of Claim and requested the Claim be dismissed and/or that no award in the amount alleged or any other amount be entered.

OTHER ISSUES CONSIDERED & DECIDED

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 remains on file with the NASD;

Respondent Nicola joined in the Statement of Answer of Respondent Gruntal prior to the start of the first hearing.

AWARD

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

- 1- Claimant Arline Angel's Motion to Bar is denied;
- 2- The claims of the Claimant Arline Angel against Respondents Gruntal & Co., Inc. and Carl Nicola are hereby dismissed;
- 3- All other claims are dismissed;
- 4- All parties shall bear their own costs, including attorneys' fees;

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FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$250.00 non-refundable filing fee and the following Forum Fees are assessed.

21 sessions X \$1,000.00 = \$21,000.00

1 session X \$300.00 = \$300.00

Total = \$21,300.00

Forum fees Assessed Against:

1- Claimant, Arline Angel, in the amount of \$10,650.00; however, the NASD shall retain Claimant's \$1,000.00 hearing session deposit, therefore, the amount due and owing equals \$9,650.00;

2- Respondent, Gruntal & Co., Inc., in the amount of \$10,650.00.

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

Concurring Arbitrators' Signatures


Stuart N. Kingoff/Industry Arbitrator


Henry McCoy, III/Public Arbitrator


Edward M. Sills/Public Arbitrator

Date of Decision: October 16, 1992