

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :

Edward & Josephine Zita, JT/WROS :

Claimants :

CASE #91-00545
AWARD

vs. :

Gruntal & Co., Inc. :

Hal Rose :

Catherine Monteforte :

Respondents :
-----CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 20, 1991, Claimants, Edward & Josephine Zita, who appeared Pro Se, alleged that in June, 1989 Respondent Catherine Monteforte, an account executive at a Carteret Bank branch office of Respondent, Gruntal & Co., Inc. solicited and recommended Claimants purchase Franklin's AGE Income Fund, Inc. bonds (the "Fund") with their proceeds from a maturing Certificate of Deposit ("CD") and misrepresented the risk of loss to Claimants. Claimants further alleged that Respondent Catherine Monteforte assured them that there was no cost to buy into the Fund and that it was a safe, secure investment designed for high income. Claimants contended that in September and October 1989 they purchased more of the Fund with other proceeds from maturing CD's on the advice of Respondent, Catherine Monteforte. Claimants further contended that Respondent, Catherine Monteforte failed to fully explain the value of the fund, in that Claimants were receiving a monthly check while the actual value of the shares were continually declining. Claimants asserted that all market indicators supported further declines, at which time Claimants sold their investment which resulted in a loss to their account. Claimants further asserted that they notified Respondent, Hal Rose, Vice President of Respondent Gruntal & Co., Inc. of Respondent, Catherine Monteforte's misrepresentation of the fund to Claimants and requested they find a mutual solution to their loss. Claimants argued that Respondents Gruntal & Co., Inc. and Hal Rose failed to rectify the matter and Respondent Catherine Monteforte's failure to ascertain Claimants investment objectives prior to this unsuitable, highly speculative recommendation, caused them to incur losses.

Respondent, Gruntal & Co., Inc. by and through their in-house counsel, Eric S. Hutner, Esq., maintained that in June 1989 Claimants, Edward & Josephine Zita opened an account serviced by Respondent, Catherine Monteforte at a Carteret Bank branch office of Respondent, Gruntal & Co., Inc. at which time Claimants had a maturing CD and requested information regarding alternative investments that would provide a higher rate of return and income on a monthly basis. Respondent, Gruntal & Co., Inc. further maintained that Respondent, Catherine Monteforte ascertained Claimants investment goals and financial background prior to recommending the Fund. Respondent contended that contrary to Claimants allegations, the Fund is not a highly speculative investment and involves average risk which was yielding a return of 14%. Respondent further contended that Respondent, Catherine Monteforte provided Claimants with all relevant information including a prospectus of the Fund and informed Claimants that unlike their certificates of deposit, their principal was neither insured or guaranteed. Respondent asserted that Claimant's other purchases of the Fund were unsolicited and on each of these subsequent purchases, the price per share paid by Claimants was lower than the previous purchase, therefore, Claimants were aware that the value of the Fund fluctuated and, at the time was declining. Respondent further asserted that during the ten months Claimants held shares in the Fund, they received a return of approximately 14% and the Fund continues to perform well with superior return. Respondent argued that if Claimants had retained their shares for a long-term investment as originally indicated to Respondent, Catherine Monteforte, they would have continued to receive high income dividends from their investment in the Fund. Respondent further argued that Respondent, Catherine Monteforte appropriately recommended the Fund to Claimants who were looking for a long-term investment that would have a higher yield than a CD and would have the advantage of monthly payments.

Respondent, Hal Rose maintained that Respondent, Catherine Monteforte, a Gruntal & Co., Inc. brokerage representative, notified him that Claimant's son, Edward C. Zita, accused her of misleading Claimants into purchasing Franklin's AGE Income Fund, Inc. bonds. Respondent, Hal Rose further maintained that he advised Respondent Catherine Monteforte to inform Claimants to send a letter to him outlining their complaint at which time he would forward it to Respondent, Gruntal & Co., Inc. Compliance department for resolution. Respondent, Hal Rose contended that when he received Claimant's letter dated June 8, 1990 he forwarded a copy to Mr. John Lindquist, Compliance Administrator at Respondent, Gruntal & Co., Inc. at which time he assisted Mr. Lindquist in an investigation of the allegations. Respondent, Hal Rose further contended he heard nothing further about the complaint until he received notification from the NASD, Inc. that Claimants filed a complaint against Respondent, Catherine Monteforte, at which time

he again assisted in an investigation of the allegations. Respondent asserted that he never spoke to or was directly involved with Claimants at any time and his only involvement was to handle their complaint. Respondent, Hal Rose further asserted that Claimants have not accused him of misconduct or contributing to another party's misconduct therefore, he should be released from this matter.

Respondent, Catherine Monteforte maintained that Claimants Edward & Josephine Zita requested information regarding alternatives that would provide higher interest rates than those of certificates of deposit. Respondent, Catherine Monteforte further maintained that she recommended the Franklin Income and Franklin Age Funds since Claimants wanted a monthly check at which time she fully explained and discussed the investment. Respondent, Catherine Monteforte contended that she provided Claimants with all relevant information of the investment including a prospectus, in addition to, advising Claimants of the fluctuations of the share price and that the principal was neither guaranteed or insured. Respondent, Catherine Monteforte further contended that Claimants invested \$12,708.30 in the Fund and on two other occasions made additional unsolicited purchases in the Fund. Respondent, Catherine Monteforte asserted that on April 30, 1990 Claimants advised her they wanted to liquidate all their fund shares, at which time she informed Claimants that share prices were down and they would suffer a loss but Claimants informed Respondent they needed the funds for an emergency. Respondent, Catherine Monteforte further asserted that on May 16, 1990 Claimant's son Edward C. Zita visited her office where he accused her of misleading Claimants into the investment and demanded full reparation, at which time she informed Claimants she would notify her department head of their complaint. Respondent, Catherine Monteforte argued that as instructed she advised Claimants to direct their complaint to Respondent, Hal Rose who would investigate their allegations. Respondent, Catherine Monteforte further argued that Claimants had been in the fund for 10 months prior to liquidation and there was no expression of dissatisfaction or complaint voiced by Claimants.

RELIEF REQUESTED

Claimants, Edward & Josephine Zita requested \$5,000.00 in actual damages.

Respondent, Gruntal & Co., Inc. requested the claim be dismissed in its entirety and costs be assessed against Claimants.

Respondent, Hal Rose Requested the claim be denied.

Respondent, Catherine Monteforte requested the claim be denied.

AWARD

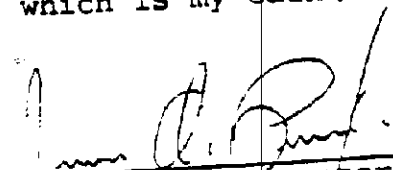
Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jerome A. Pivnik, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 14, 1991, by the Respondent, Gruntal & Co., Inc. on August 13, 1991, by the Respondent, Hal Rose on August 8, 1991 and by the Respondent, Catherine Monteforte on October 12, 1991.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Gruntal & Co., Inc. and Catherine Monteforte are jointly and severally liable and shall pay to the Claimants, Edward & Josephine Zita the sum of \$4,963.00 in damages.
2. Respondents, Gruntal & Co., Inc. and Catherine Monteforte are jointly and severally liable and shall pay to the Claimants pre-judgement interest at the rate of 12% per annum from May 3, 1990, in the amount of \$1,141.00.
4. The claims of Claimants, Edward & Josephine Zita against Respondent, Hal Rose are dismissed.
5. The parties shall bear their respective costs.
6. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants, Edward & Josephine Zita shall be retained by the NASD, Inc. Respondents, Gruntal & Co., Inc. and Catherine Monteforte are jointly and severally liable and shall pay to the Claimants the sum of \$125.00 as reimbursement.

AFFIRMATION

I, JEROME A. PIVNIK, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: June 9, 1992