

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)	
)	
<u>Name of Claimant(s)</u>)	
Jane P. Burroughs)	
)	
<u>Name of Respondent(s)</u>)	Case No. 91-01031
Gruntal & Co., Inc.)	
Carl Nicola)	

REPRESENTATION

For Claimant, Jane P. Burroughs ("Burroughs"): Michael Casey, Esq. of Casey & Molchan.

For Respondent, Gruntal & Co., Inc. ("Gruntal"): W. Reece Bader, Esq. of Orrick, Herrington & Sutcliffe

For Respondent, Carl Nicola ("Nicola"): Terry Freeman, Esq. of Beverly & Freeman.

CASE INFORMATION

Statement of Claim filed: April 2, 1991 and amended on April 17, 1991.
Claimant's Submission Agreement signed: March 23, 1991.

Respondent, Gruntal's, Statement of Answer filed: June 24, 1991. Respondent, Gruntal's, Submission Agreement signed: May 10, 1991 by Lionel Hest on behalf of Gruntal.

Respondent, Nicola's, Submission Agreement signed: March 31, 1992. Respondent, Nicola, did not file a Statement of Answer as required by Sections 12 and 25 of the Code but appeared at the hearing to defend (See Other Issues).

HEARING INFORMATION

On March 30, 31; April 1, 2; May 4, 5, 27, 28, 29; June 2, 8, 9, 11, 29, and 30; July 28, 29, 30 and 31; 1992, in Fort Lauderdale, Florida, hearings lasting 41 sessions were conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable for manipulating and churning Claimant's account; misrepresenting that Nicola would safeguard her assets while producing income with little or no risk to her capital; and, purchasing

unsuitable stocks bonds and options for Claimant's account. Claimant alleged that Respondents were liable for: violation of Chapter 517 of the Florida Statutes; common law fraud; breach of fiduciary duty; and improper supervision.

Respondent, Gruntal, denied all allegations of wrongdoing and alleged that Claimant was a sophisticated investor who wanted to trade in stocks, bonds, options and commodities; Claimant received risk disclosure statements and monthly statements and was otherwise made aware of the risks involved and voluntarily assumed such risks; the losses were the result of market activities; Gruntal exercised proper supervision over Nicola and fulfilled its regulatory duties and did not engage in any fraudulent conduct. Respondent, Gruntal, alleged affirmative defenses including: laches and statute of limitations.

Respondent, Nicola, failed to file an Answer but appeared at the hearing to defend.

RELIEF REQUESTED

Claimant requested damages in excess of \$1,250,000.00, plus interest costs and attorney's fees.

Respondent, Gruntal, requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. This Panel finds that Respondent, Nicola, was required to file an Answer pursuant to Sections 12 and 25 of the NASD Code of Arbitration Procedure, Respondent, Nicola, being a person associated with an NASD member firm, Respondent, Gruntal, at the time this controversy arose.

2. 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 originals remain on file with the NASD.

AWARD

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

1. Respondents, Gruntal and Nicola, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$1,425,900.00, plus interest in the amount of \$456,288.00 for a total due to the Claimant of \$1,882,188.00.

2. Claimant's request for attorney's fees is denied.

OTHER COSTS

1. Respondents, Gruntal and Nicola, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$31,926.00 for costs of expert witnesses, copying charges and other miscellaneous costs.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$41,000.00 (41 sessions x \$1,000.00 per session).
2. Respondents, Gruntal and Nicola, are hereby assessed \$41,000.00 jointly and severally, \$20,500.00 of which shall be paid directly to the Claimant and \$20,500.00 of which has already been paid to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the session deposit of \$1,000.00, and the additional session deposit of \$19,500.00 paid by Claimant as well as the additional session deposit of \$20,500.00 paid by Respondent, Gruntal, in full satisfaction of such forum fees, leaving a balance due the NASD of \$0.00.
4. The NASD shall retain the non-refundable filing fee of \$250.00 paid by the Claimant.
5. Respondents, Gruntal and Nicola, shall jointly and severally reimburse the Claimant \$250.00 for the non-refundable filing fee.

Concurring Arbitrators' Signatures

/s/
Steven D. Elias, Esq.

Public

/s/
Douglas Delaney, Jr.

Industry

/s/
Eduardo J. Palacio, Esq.

Public

Date of Decision: October 23, 1992