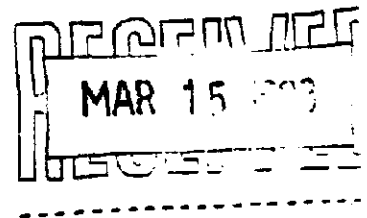


N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS



---

In the Matter of the Arbitration Between

Name of Claimant(s)

Ottavio DiDomenico

Case No. 91-03344

Name of Respondent(s)

Gruntal & Co., Inc.  
Bruce C. Black

---

**REPRESENTATION**

For Claimant, Ottavio DiDomenico ("DiDomenico"): Howard Schwartz, Esq. of the law offices of Howard Schwartz.

For Respondent, Gruntal & Co., Inc. ("Gruntal"): Richard Janvey, Esq. of Janvey, Gordon.

Respondent, Bruce Black ("Black"): was pro se.

**CASE INFORMATION**

Statement of Claim filed: October 23, 1991. Claimant's Submission Agreement signed: September 30, 1991.

Respondent, Gruntal's, Statement of Answer filed: February 14, 1992. Respondent, Gruntal's, Submission Agreement signed: February 13, 1992 by Lionel Hest on behalf of Gruntal.

Respondent, Black, did not file a Statement of Answer or sign a Submission Agreement as required by Sections 12 and 25 of the Code. (see "Other Issues")

**HEARING INFORMATION**

On February 4, 1993, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions was conducted.

### **CASE SUMMARY**

Claimant alleged that Respondents were liable for: violation of Chapter 517 of the Florida Statutes; common law fraud; negligence; breach of fiduciary duty; breach of contract; forgery; and, violations of Section 10(b) and Rule 10(b)(5) of the Securities Exchange Act. Claimant alleged that Black: forged his signature on a margin account agreement; opened an unauthorized margin account; improperly transferred funds; purchased municipal trusts without Claimant's authorization; co-mingled Claimant's funds; and, made various other misrepresentations. Claimant alleged that Gruntal was liable for negligent hiring, negligent retention and under the doctrine of respondeat superior.

Respondent, Gruntal, denied all allegations of wrongdoing and alleged the affirmative defenses of: ratification; estoppel; assumption of risk; laches; Black acted outside the scope of his employment; no losses can be attributed to Gruntal; and, Gruntal was not a party to any alleged "joint venture" between Claimant and Black.

Respondent, Gruntal, filed a crossclaim against Black and alleged that Black was liable for indemnification.

Respondent, Black, failed to file an Answer and did not appear at the hearing to defend (see "Other Issues").

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$20,000.00, plus interest, attorney's fees and costs.

Respondent, Gruntal, requested dismissal of the claim and cross-claimed against Black for indemnification.

Respondent, Black, failed to file an Answer.

### **OTHER ISSUES CONSIDERED & DECIDED**

1. Jurisdiction exists pursuant to Section 12 of the Code of Arbitration Procedure and pursuant to the Form U-4 executed by Respondent, Black. This Arbitrator finds that Black was required to sign a Submission Agreement and file a Statement of Answer pursuant to Sections 12 and 25 of the Code, Respondent, Black, being a person associated with an NASD member firm, Gruntal & Co., Inc. at the time the controversy arose.

2. For the reasons set forth in the record of proceedings and contained in Arbitrator's Exhibit #2, this Arbitrator finds service upon and adequate notice to Respondent, Black. The NASD has made every attempt to locate and serve Black with notice of this hearing as demonstrated by the evidence contained in Arbitrator's Exhibit #2.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and Respondent, Black neither appearing at the hearing nor requesting an adjournment thereof, notwithstanding his knowledge of this arbitration as evidenced in the record of proceedings, the arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Gruntal, is found liable and shall pay to the Claimant the amount of \$18,944.08.
2. Claimant's request for attorney's fees, costs and interest is denied.
3. Cross Respondent, Black, is found liable and shall pay to the Cross Claimant, Gruntal, the amount of \$18,944.08.

### **OTHER COSTS**

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 Arbitrator has assessed forum fees in the amount of \$600.00 (two sessions x \$300.00 per session).
2. Claimant is hereby assessed \$300.00 for which the NASD shall retain the \$300.00 previously deposited in full satisfaction thereof.
3. Respondent, Gruntal, is hereby assessed \$300.00 for which the NASD shall retain \$300.00 of \$600.00 previously deposited by Gruntal.
4. The NASD shall refund to Gruntal \$300.00.
5. The NASD shall retain the \$500.00 non-refundable filing fee previously deposited by Respondent, Gruntal, and shall retain the \$100.00 non-refundable filing fee previously deposited by Claimant.

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

Arbitrator's Signature

John J. Hearn

John J. Hearn, Esq.

Public

Date of Decision: March 10, 1793