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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Beverly Ravitz and Frances Smith

91-03772

Name of Respondent(s)

Gruntal & Co., Inc.  
Lee Firpo

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REPRESENTATION

For Claimants, Beverly Ravitz ("Ravitz") and Frances Smith ("Smith"): Michael R. Casey, Esq. of Casey and Molchan, P.A.

For Respondent, Gruntal & Co., Inc. ("Gruntal"): Eric Hutner, Esq. of Gruntal.

For Respondent, Lee Firpo ("Firpo"): pro se.

CASE INFORMATION

Statement of Claim filed: December 2, 1991 and amended November 18, 1992.

Claimants' Submission Agreements signed: November 26, 1991 by Ravitz and November 16, 1992 by Smith.

Respondent, Gruntal's Statement of Answer filed: March 3, 1992 and amended January 13, 1993. Respondents' Submission Agreements signed: January 11, 1994 by Firpo and March 3, 1992 by Edward Bao on behalf of Gruntal.

Respondent, Firpo, did not file an Answer but orally adopted the Answer of Gruntal at the beginning of the hearing.

HEARING INFORMATION

On December 10, 1992 in Fort Lauderdale, Florida, Pre-Hearing Conference

### HEARING INFORMATION

On December 10, 1992 in Fort Lauderdale, Florida, Pre-Hearing Conference lasting 1 session was conducted, via telephone conference call, with an arbitrator.

On January 11 and 12, June 23 and 24, and August 22 and 23, 1994, in Fort Lauderdale, Florida, hearings lasting twelve (12) sessions were conducted.

### CASE SUMMARY

Claimants, a single woman and her elderly widowed mother, alleged that they were fraudulently induced by the Respondents, to invest in a series of speculative investments, principally the McDonnell-Douglas Limited Partnership and the CRITEF-III Limited partnership; that Respondents misrepresented the risks involved in these limited partnerships and that the Respondents' recommendations of these limited partnerships, particularly considering the amounts recommended, were unsuitable in view of the Claimants' modest net worth, inability to replace capital losses, need for liquidity and other risky or illiquid investments in their portfolios; and, that the wrongful acts of the Respondents constituted Florida common law fraud, breach of fiduciary duty and violations of the Florida Securities and Investor Protection Act.

Respondents alleged that, in the initial Statement of Claim, Claimant Ravitz asserted that Firpo effected a series of unauthorized trades, wrote covered calls without authorization, transferred money without authorization among various accounts in which Claimant or members of her family had an interest, and misappropriated funds from one or more of her accounts for his own use and benefit; that Gruntal had denied all allegations that it or its agent Firpo engaged in any wrongful conduct, and asserted as affirmative defenses that the Statement of Claim failed to state a cause of action and that the Claimant approved and ratified all transactions conducted in her account at Gruntal; that in November 1992, Claimant interposed an Amended Statement of Claim joining Frances Smith as a second Claimant; that the revised pleading withdrew several of the claims previously asserted and in their place asserted that Firpo recommended six investments to the Claimants that were unsuitable, made one unauthorized purchase of stock, and misappropriated funds; that Claimants asserted that this conduct violated the Florida Securities Act and constituted common law fraud and a breach of fiduciary duty by both Respondents; and that Respondent Gruntal filed a Response to the Amended Statement of Claim in which it denied that either it or its agent Firpo engaged in any wrongful conduct or breached any duty owed to Claimants.

**RELIEF REQUESTED**

Claimants requested rescissory damages in the amount of \$52,115.00 as to Ravitz and \$37,835.00 as to her mother, Frances Smith. The Claimants also requested an award for the costs of these proceedings, including filing fees, hearing session deposits, expert witness fees and a reasonable attorneys' fee.

Respondents requested dismissal and costs.

**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 originals remain on file with the NASD.

**AWARD**

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

1. Respondents Gruntal and Firpo are found liable, jointly and severally, and shall pay to the Claimants the amount of \$11,541.50, inclusive of interest.
2. Respondents, Gruntal and Firpo, are also found liable, jointly and severally, and shall pay to the Claimants the further amount of \$3,500.00 for expert witness costs.
3. Claimants' request for attorney's fees is denied.

**OTHER COSTS**

None.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed Forum Fees in the amount of \$6,300.00 (one pre-hearing conference x \$300.00 plus 12 regular sessions x \$500.00).

1. Claimants are hereby assessed \$3,150.00, for which the NASD shall retain \$500.00 of the previously deposited fees in partial satisfaction thereof, leaving a balance due to the National Association of Securities Dealers, Inc. of \$2,650.00.

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2. Respondents, Gruntal and Firpo, are hereby assessed \$3,150.00, jointly and severally, for which the NASD shall retain \$750.00 of the fees previously deposited by Gruntal in partial satisfaction thereof, leaving a balance due to the National Association of Securities Dealers, Inc. of \$2,400.00.

3. The NASD shall retain the \$300.00 and \$500.00 Postponement fees previously assessed against the Claimants and Respondents, respectively.

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

Concurring Arbitrators' Signatures

Name /Industry

/S/  
Linda M. Granata, Esq. Public

/S/  
Anthony S. Paetro, Esq. Industry

/S/  
Richard S. Zaifert, Esq. Public

Date of Decision: 10/3/94