

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Lee Levin

92-04363

Name of Respondents

Gruntal & Co., Inc.
Jonathan Lyons

REPRESENTATION

For Claimant Lee Levin ("Levin") appeared Thomas P. Lynch, Esq. of the law firm Lynch, Rowin, Novack, Burnbaum & Crystal, P.C., New York City, NY.

For Respondents Gruntal & Co. ("Gruntal") and Jonathan Lyons ("Lyons") appeared Kevin T. Rover, Esq. of the law firm of Morgan, Lewis & Bockius, New York City, NY, and William D. Briendel, Esq. of the law firm of Greenberg, Taurig, Hoffman, Lipoff, Rosen & Quentel, New York City, NY.

CASE INFORMATION

The Statement of Claim was filed on December 24, 1992 and Claimant's Submission Agreement was signed on December 21, 1992.

The Joint Statement of Answer was filed by Respondents on February 24, 1993. Respondents did not execute submission agreements.

HEARING INFORMATION

Hearing Dates/Sessions:	September 29, 1993	-	Two Sessions
	October 1, 1993	-	Two Sessions
	December 20, 1993	-	Two Sessions
	December 21, 1993	-	Two Sessions
	June 14, 1994	-	Two Sessions

June 15, 1994	-	Two Sessions
August 16, 1994	-	Two Sessions
August 17, 1994	-	One Session

The hearing was held at the National Association of Securities Dealers, Inc.'s offices located in New York City, New York.

CASE SUMMARY

Claimant alleged that he opened his account at Gruntal on April 16, 1992; that the account was opened as a "cash" account, not a margin account; on that same date, Respondent Lyons purchased for Claimant's account 1,000 share of Candela at a price of \$13 per share; and that the confirmation sheet relating to this transaction listed this transaction as "unsolicited" when in fact Respondent Lyons had solicited the transaction.

Claimant also alleged that prior to setting up the Gruntal account, Respondent Lyons did not familiarize himself with the essential facts relating to Claimant's background; that Respondents neither asked about, nor confirmed, Claimant's present financial position; that Respondent Lyons falsified certain information on the New Account Form when he opened Claimant's account; that Respondent Lyons falsely stated that Levin had previously traded "bonds"; and that Respondent Lyons failed to disclose how Lyons had obtained Levin as a customer.

Moreover, Claimant alleged that Respondent Lyons again contacted Claimant and advised Claimant that the Candela stock was undergoing a technical correction which caused the price of the stock to fall, and also advised Claimant to purchase additional shares of the stock since at this time the stock was "a good buy." Claimant also alleged that additional shares of Candela stock were purchased from Claimant's account and that the total purchase price of these transactions represented over 50% of Claimant's net worth and virtually all of his liquid assets; that sometime during May of 1992, Respondent Lyons converted Claimant's account from a "cash" account to a "margin" account; and that Respondent Lyons gave Claimant certain papers to sign in order to accomplish this change of account status, but did not give Claimant copies of these documents for his files. Additionally, Claimant alleged that during the period July 1, 1992 through August 1, 1992, because the price of Candela stock had fallen and the

stock had been purchased on margin, Claimant received several margin calls from Gruntal; that to cover the margin calls Claimant transferred to his Gruntal account certain securities Claimant held in his account at another firm; and that on August 11, 1992, Respondent Lyons sold the securities to cover Claimant's margin positions.

Claimant also alleged that beginning in August, 1992, Respondent Lyons purchased on margin for Claimant's account three blocks of US Treasury Bond Strips in the face amount of One Million Dollars each; that these strips were totally unsuitable for a semi-retired, sixty-three year old person such as Claimant; and that Respondent Lyons recommended these securities solely to generate commissions for himself of at least \$15,000 on each block of bonds.

Claimant further alleged that the theories of misrepresentations or omissions of material facts, unsuitability, violation of Section 10(b), Rule 405 of the NYSE requiring due diligence to learn the essential facts relative to every customer, as well as the requirement that every member firm diligently supervise all accounts, apply to the Claimant's Statement of Claim.

Respondents denied all allegations of wrongdoing as set forth in the Statement of Claim. Respondents maintained that the claimant was an intelligent, educated individual, who was an active participant in the trading in his account; that Claimant was fully aware of the nature of the investments which were recommended to him and which he approved; and that each and every trade was consistent with his investment objectives and suitable for his account. Respondents further denied that any securities in Claimant's account were sold without his prior authorization; that any guarantees were given concerning these recommendations; or that misrepresentations were made.

Respondents also maintained that Claimant's allegations that Respondents owed a fiduciary duty which Respondents breached is unsupported by law or fact; that Claimant is an experienced investor; that claimant is a business man who was fully capable of understanding the nature of his investment; that Claimant received monthly statements and confirmations on each trade and was at all times able to follow his account; that at no time did Claimant relinquish control of his account; and that no private cause of action exists for violations of NYSE and NASD rules.

As for its affirmative defenses Respondent maintained that Claimant authorized

accepted and/or ratified each of the transactions of which Claimant complains; that Claimant's account was handled properly and in accordance with the "Know Your Customer" rule of the NYSE and the "Suitability Rule" of the NASD; that Claimant's account was invested in accordance with his investment objectives; that any losses sustained by Claimant are attributable to market conditions and to his own investment decisions, not to any action or inaction on Respondents' part; Claimant failed to state a claim upon which relief can be granted; Claimant failed to mitigate damages; and that Claimant failed to state a claim for punitive damages and cannot recover punitive damages in arbitration.

RELIEF REQUESTED

Claimant requested an award for stock losses in the amount of \$271,100.00, treble or punitive damages in the amount of \$800,000.00, and attorneys' fees in the amount of \$350,000.00, for total damages of \$1,421,100.00.

Respondents requests that Claimant's claim be dismissed in its entirety and that judgment be awarded in favor of respondents.

OTHER ISSUES CONSIDERED & DECIDED

This panel finds that Respondents Gruntal & Co. and Jonathon Lyons were required to sign submission agreements pursuant to Sections 12 and 25 of the Code of Arbitration Procedure, Gruntal & Co being an NASD member firm and Jonathon Lyons being associated with an NASD member firm at the time this controversy arose. This panel finds that it has jurisdiction over Respondent Lyons pursuant to Section 12 of the Code and pursuant to the Form U-4 executed by Respondent Lyons.

The parties agreed that the hearing would proceed only with arbitrators Witkowski and Mruk after they were advised that arbitrator Jerome Goodgal would not be able to continue to fulfill his responsibilities as an arbitrator due to serious illness.

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. Respondent Jonathon Lyons be and hereby is liable and shall pay to the Claimant the sum of \$56,500.00, with interest on \$21,500.00 at the rate of three quarters of one per cent per month,

compounded, commencing August, 1992 until paid to Claimant.

2. Respondent Gruntal & Co. be and hereby is liable and shall pay to the Claimant the sum of \$50,000.00, with interest on \$15,000.00 at the rate of three quarters of one per cent per month, compounded, commencing August 1992 until paid to Claimant.
3. All claims for treble and/or punitive damages be and hereby are denied.
4. Each party shall bear their respective costs, including attorneys' fees.
5. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

1 postponement x \$1000.00 = \$ 1,000.00
15 sessions x \$1000.00 = \$15,000.00 minus hearing session deposit of
\$1000.00 = net \$14,000.00 due.

TOTAL OUTSTANDING FORUM FEES DUE = \$15,000.00

Claimant be and hereby is liable and shall pay to the NASD, Inc. the sum of \$7,500.00 representing one-half of the outstanding forum fees and Respondents be and hereby are, jointly and severally, liable and shall pay to the NASD, Inc. the sum of \$7,500.00 representing one-half of the outstanding forum fees.

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

Page 6
Award 92-04363

Concurring Arbitrators' Signatures
Name

John J. Witkowski, Jr., Esq.
Industry Arbitrator- Chairperson

Edwin S. Mruk
Edwin S. Mruk
Public Arbitrator

STATE OF NY
COUNTY OF NY

On this 8th day of September, 1994, before me personally
appeared Edwin Mruk known to me to be the individual described
in and who executed the foregoing instrument and duly acknowledged to me that
he/she executed the same.

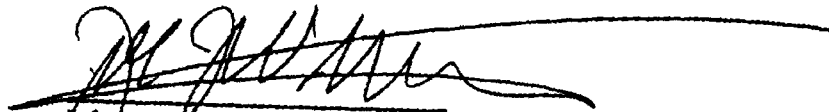
Deborah A. DeJesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County 96
Commission Expires January 24, 1996

Date of Decision: September 20, 1994

Page 6
Award 92-04363

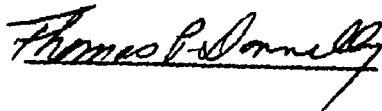
Concurring Arbitrators' Signatures
Name


John J. Witkowski, Jr., Esq.
Industry Arbitrator- Chairperson

Edwin S. Mruk
Public Arbitrator

STATE OF New York
COUNTY OF Richmond

On this 16TH day of September, 1994, before me personally
appeared JOHN J. WITKOWSKI, JR. known to me to be the individual described
in and who executed the foregoing instrument and duly acknowledged to me that
he/she executed the same.



THOMAS P. DONNELLY
NOTARY PUBLIC, STATE OF NEW YORK
NO. 43-6068750
QUALIFIED IN RICHMOND COUNTY
COMMISSION EXPIRES 9/30/97

Date of Decision: September 20, 1994