

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

---

In the Matter of the Arbitration Between

**Name of Claimants**

Jon and Karen Rosen

vs.

Case  
#93-00164

**Name of Respondents**

Shearson Lehman Brothers, Inc.  
Gruntal & Co., Inc.  
Steven J. Waldman

---

**REPRESENTATION**

For Claimants, Jon and Karen Manno Rosen ("Claimants"), Sandor Frankel, Esq. from the law firm of Frankel & Abrams, located in New York, New York.

For Respondent, Shearson Lehman Brothers, Inc. ("Shearson"), John Bevilacqua, Esq. in-house counsel at Shearson, located in New York, New York.

For Respondent, Gruntal & Co., Inc., ("Gruntal"), Howard Elisofon, Esq. from the law firm of Greenberg Traurig Hoffman Lipoff, et al., located in New York, New York.

Respondent, Steven Jay Waldman ("Waldman"), was not represented by counsel.

**CASE INFORMATION**

Statement of Claim was filed on January 13, 1993.

Amended Statement of Claim was filed on October 20, 1993.

Claimants' Submission Agreement was signed on February 3, 1993 and October 19, 1993.

Amended Statement of Answer was filed by Respondent Shearson on May 6, 1993.

Respondent Shearson's Submission Agreement was signed on May 3, 1993.

Statement of Answer was filed by Respondent Gruntal on January 3, 1994.

Gruntal did not execute a Submission Agreement.

Statement of Answer was filed by Respondent Waldman on January 5, 1994.  
Waldman did not execute a Submission Agreement.

### **HEARING INFORMATION**

Hearing Dates/Sessions:	July 13, 1994	-	2 sessions
	July 14, 1994	-	2 sessions
	July 15, 1994	-	2 sessions
	July 19, 1994	-	2 sessions

Hearing Location: NASD offices, located in New York, New York.

### **CASE SUMMARY**

Claimants initially commence this claim against Shearson and Waldman for damages arising out of unauthorized trades and deceptive practices designed to conceal Waldman's misconduct in their account. Claimants later amended their claim to add Gruntal as a Respondent.

Claimants allege that at the time they opened the account they had no experience in investment and the section on the account form referring to options was crossed out. Claimants also allege that they opened the account with \$500,000.00, indicated that their investment objectives were conservative in nature to preserve their principal investment and make withdrawals only from income earned from the principal. Claimants also allege that Waldman also prepared a document which set forth their investment objectives.

Claimants further allege that Waldman subsequently traded options in their account without authorization, failed to explain the risks involved in options trades and churned their account. Claimants maintain that when they questioned Waldman about their account he responded that Shearson's monthly statements were in error, that their account was actually earning money and presented handwritten documents which showed the profitability of the account. Claimants state that based upon Waldman's fraudulent misrepresentation, they withdrew funds from their account believing that they were withdrawing profits and income when they were, in fact, withdrawing their principal.

Claimants contend that when Waldman became employed by Gruntal, they transferred their account because they were unaware of Waldman's fraud which continued during the life of the account at Gruntal. Claimants state that they discovered that the true value of their account was \$300,000.00 in May, 1992 and Waldman refused to compensate them despite requests to do so.

Claimants state that Waldman's and Gruntal's activities were in violation of 15 U.S.C. Section 78j(b) and Rule 10b-5 thereunder, that Respondents were in violation of 18 U.S.C. Section 1961 et seq., that Gruntal and Waldman breached their fiduciary duty, breached the covenant of good faith and were negligent, that Waldman committed fraud and that Gruntal is liable under the theory of Respondent's Superior.

Shearson denies the allegations of wrongdoing, denies liability and asserts five affirmative defenses.

Shearson maintains that Claimants' investment objectives was to obtain high monthly income, a higher rate of return than offered by government securities, and liquidity so that they could make frequent withdrawals. Shearson also maintains that when Claimants expressed an interest in increasing the income in their account, Waldman suggested selling covered call options, explained the characteristics and risks and updated Claimants' new account card. Shearson further maintains that it sent Claimants a letter approximately seven months later confirming their investment objectives and asked them to contact Shearson if they had any questions about the accuracy of the information.

Shearson states that Claimants made a profit during the life of the account at Shearson, that they withdrew funds frequently and that their net gain was approximately \$12,391.00 as a result of options premiums, stock dividends and bond interest.

Gruntal denies any and all liability to Claimants and asserts ten affirmative defenses. Gruntal contends that Claimants, apparently satisfied with the manner in which Waldman handled their account at Shearson, transferred their account when Waldman joined Gruntal. Gruntal states that Claimant indicated that their investment objectives as growth income and speculation and transferred their account to Gruntal with short position and positions on margin. Gruntal also contends that it is inconceivable that Claimants relied on Waldman's representations concerning the balances in their account at both firms when they were sent monthly statements and confirmations were regularly sent to them.

Gruntal also states that they regularly conducted routine reviews of Waldman's daily transactions and did not find any violation of industry standards and/or rules and regulations. Gruntal further states that Claimants executed and returned a letter that they were aware of the activities in their account.

Waldman denies the allegations of wrongdoing and denies liability. Waldman contends that Claimants terminated their relationship with him after almost two years of approving his investment decisions when their expectations of large profits failed to come to fruition. Waldman states that during the time he acted as their broker, they did not complain of excessive trading, unauthorized or unsuitable investments.

**RELIEF REQUESTED**

Claimants request compensatory damages from Respondents in an amount to be determined by the Panel, treble damages from Shearson, \$1,000,000.00 in punitive damages from Shearson and \$1,000,000.00 from Gruntal and Waldman including interest, costs and attorney's fees.

Respondents request that the Statement of Claim be dismissed and that they be awarded their costs and attorney's fees.

**OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies and agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

After the hearing commenced, Claimants settled their dispute with Shearson and Gruntal.

**AWARD**

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

- 1) Respondent Waldman is hereby liable to Claimants and shall pay claimants **FORTY SEVEN THOUSAND DOLLARS AND ZERO CENTS (\$47,000.00)**.
- 2) All other claims for relief are denied.

**FORUM FEES**

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

Non-refundable Filing Fee - \$250.00

Hearing Session Fees - (7 hearing sessions x \$1,000.00 = \$7,000.00)

Total Fees = \$7,250.00.

- 1) Claimants are assessed fees in the amount of \$1,250.00, which has already been paid.
- 2) Gruntal is assessed \$3,000.00 in forum fees.
- 3) Shearson is assessed \$3,000.00 in forum fees.

- 4) Gruntal is further assessed \$1,000.00 in connection with the postponement of the May 18 and 19, 1994 hearing dates, which has been paid.
- 5) Gruntal is also assessed \$28.50 in administrative costs.

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

**ARBITRATION PANEL**

Dorothy F. Gray, Esq.	-	Public Chairperson
Kinchen C. Bizzell, Esq., CFA	-	Public Panelist
Thomas F. Coyne	-	Industry Panelist

Concurring Arbitrator's Signature

Kinchen C. Bizzell  
Kinchen C. Bizzell, Esq., CFA

Date of Decision: October 5, 1994

On this <sup>4<sup>th</sup></sup> day of ~~September~~ <sup>October</sup>, 1994, before me personally appeared **Kinchen C. Bizzell** known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Anil M. Mukherjee

ANIL M MUKHERJEE  
Notary Public, State of New York  
No 41-4985497  
Qualified in Queens County  
Commission Expires August 19, 1995

Award #93-00164

Page 5

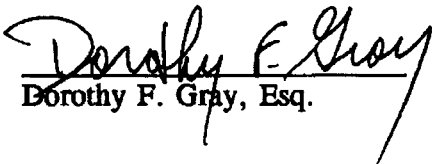
- 4) Gruntal is further assessed \$1,000.00 in connection with the postponement of the May 18 and 19, 1994 hearing dates, which has been paid.
- 5) Gruntal is also assessed \$28.50 in administrative costs.

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

**ARBITRATION PANEL**


Dorothy F. Gray, Esq.	-	Public Chairperson
Kinchen C. Bizzell, Esq., CFA	-	Public Panelist
Thomas F. Coyne	-	Industry Panelist

Concurring Arbitrator's Signature

  
Dorothy F. Gray, Esq.

Date of Decision: October 5, 1994

On this <sup>22</sup> day of September, 1994, before me personally appeared Dorothy F. Gray known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

  
HAZEL GUELINAZARIO  
Notary Public, State of New York  
NO. 24-4986738  
Qualified in New York County  
Commission Expires September 23, 1995

Award #93-00164

Page 5

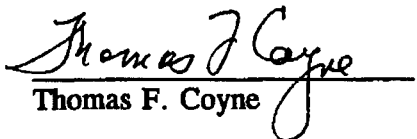
- 4) Gruntal is further assessed \$1,000.00 in connection with the postponement of the May 18 and 19, 1994 hearing dates, which has been paid.
- 5) Gruntal is also assessed \$28.50 in administrative costs.

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

**ARBITRATION PANEL**

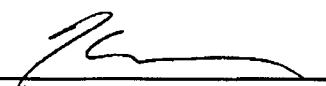
Dorothy F. Gray, Esq.	-	Public Chairperson
Kinchen C. Bizzell, Esq., CFA	-	Public Panelist
Thomas F. Coyne	-	Industry Panelist

Concurring Arbitrator's Signature

  
Thomas F. Coyne

Date of Decision: October 5, 1994

On this      day of September, 1994, before me personally appeared Thomas F. Coyne known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

  
KATHRYN BLANCO  
Notary Public, State of New York  
No. 30-4718565  
Qualified in Nassau County  
Commission Expires ~~Sept~~ 30, 1996