

12/94

94/2057

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Mared Industries Inc. Pension
and Profit Sharing Trust and
Edward Guttenberg

NASD Arbitration
No. 93-00441

Name of Respondent(s)

Gruntal & Co., Inc.
Ira T. Distenfield

REPRESENTATION

For Claimants: Bruce R. Safran, Esq., Sherman Oaks, California

For Respondent Gruntal & Co., Inc.: Eric S. Hutner, Esq., Gruntal
& Co., Inc., New York, New York

CASE INFORMATION

Statement of Claim filed: January 28, 1993

Claimants' Submission Agreements signed as follows:

Edward Guttenberg, Individually: January 25, 1993

Edward Guttenberg as Trustee: March 11, 1993

Statement of Answer filed by Respondent Gruntal & Co., Inc.: May
10, 1993

Respondent Gruntal & Co., Inc.'s Submission Agreement signed: May
10, 1993

HEARING INFORMATION

9412051

Pre-Hearing Conference Date(s)/Session(s):

October 17, 1994 (one session)

Hearing Date(s)/Session(s): November 2, 1994 (two sessions)

November 3, 1994 (two sessions)

Hearing Location:

Los Angeles, California

CASE SUMMARY

Claimants alleged that Ira T. Distenfield, formerly employed by Gruntal & Co., Inc. (Gruntal), misrepresented to Claimants the nature of the risk involved in the purchase of Super Computing Solutions, Inc. Claimants further alleged that Distenfield made stock transactions in Claimants' account in a manner inconsistent with Claimants' objectives and inconsistent with their representations of the goals of safety, security and preservation of capital. Claimants further alleged: 1) violations of Sections 10(b) and 20 of the Securities Exchange Act of 1934 and Rule 10b-5 of the Securities Exchange Commission, fraud, deceit, and omission of material fact; 2) intentional misrepresentation and negligent misrepresentation; 3) breach of fiduciary duty and breach of the implied covenant of good faith and fair dealing; 4) breach of a written contract; and 5) violation of New York Stock Exchange, Inc. 342, 401 and 405, Know Your Customer Rules, and National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice with respect to Claimants' investments.

Respondent Gruntal alleged that Claimants knowingly and willingly accepted the market risk of the investments they made through Gruntal, and that they possessed sufficient financial resources such that the level of risk incurred was appropriate for the portion of their investment portfolios that they maintained at Gruntal. Gruntal further alleged that Claimants brought their suit merely because they are disappointed with their investment results, which is an insufficient basis to impose legal liability and claim damages. Gruntal also asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested damages according to proof as follows:

1. For \$100,000.00 which represents Claimants' loss on

the Super Computing Solutions common stock;

2. For \$17,681.25 which represents Claimants' loss on the Triad Systems Corp. common stock;

3. For \$23,000.00 which represents Claimants' loss on the BLSH transaction;

4. For attorney's fees, interest, costs and disbursements; and

5. For such other and further relief as may be deemed appropriate.

Gruntal requested:

1. Dismissal of Claimants' Statement of Claim in its entirety;

2. Costs and disbursements, including reasonable attorneys' fees; and

3. Such other relief as deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Prior to the evidentiary hearing, the panel was advised of Respondent Ira T. Distenfield's bankruptcy filing, thereby staying all judicial proceedings against Mr. Distenfield.

The panel is cognizant of and governed by their pre-hearing rulings of October 25, 1994.

The parties have agreed that the Award in this matter may be executed in either 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. All claims made by Edward Guttenberg in his individual capacity against Respondent Gruntal & Co., Inc. are dismissed in their entirety.

9412051

2. Respondent Gruntal & Co., Inc. is liable for and shall pay to Edward Guttenberg, in his capacity as trustee for the Mared Industries Inc. Pension and Profit Sharing Trust, the sum of \$6,850.00, inclusive of interest.

3. The parties shall each bear their respective costs including attorney's fees.

Arbitrator, Joseph M. Tillotson concurs in part and dissents in part. Mr. Tillotson would not award damages to Edward Guttenberg, in his capacity as trustee for the Mared Industries Inc. Pension and Profit Sharing Trust and therefore dissents from that portion of the award. Mr. Tillotson concurs with the award in all other respects.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$1,050.00 hearing session deposit previously deposited by the Claimants. Forum fees are to be split between Claimants and Gruntal & Co., Inc. and are calculated as follows:

One pre-hearing session @ \$300.00/session	=	\$ 300.00
Four hearing sessions @ \$750.00/session	=	\$3,000.00
Total fees assessed	=	\$3,300.00
Claimants' share (50%)	=	\$1,650.00
Credit for hearing deposit	=	\$1,050.00
Balance due	=	\$ 600.00
Gruntal & Co., Inc.'s share (50%)	=	\$1,650.00
Balance due	=	\$1,650.00

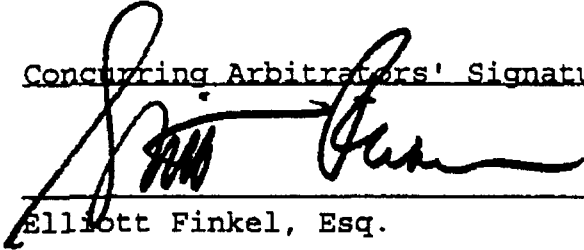
Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Elliott Finkel, Esq.	Public Arbitrator
Rochelle M. Lindsey, Esq.	Public Arbitrator
Joseph M. Tillotson	Industry Arbitrator

9412051

Concurring Arbitrators' Signatures


Elliott Finkel, Esq.

Rochelle M. Lindsey, Esq.

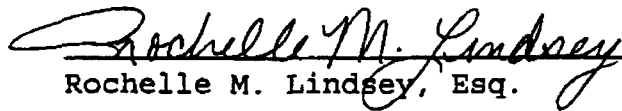
Joseph M. Tillotson
Served 12/5/94

Date of Decision: 12-1-94

9412051

Concurring Arbitrators' Signatures

Elliott Finkel, Esq.


Rochelle M. Lindsey, Esq.

Joseph M. Tillotson

Served 12/5/94

Date of Decision: _____

9412051

Concurring Arbitrators' Signatures

Elliott Finkel, Esq.

Rochelle M. Lindsey, Esq.

OS47 m Tillotson

Joseph M. Tillotson

Served 12/5/94

Date of Decision: 22 nov '94