

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Coral Wavro

93-00691

Name of Respondents

Gruntal & Co., Inc.
Steven Racher

REPRESENTATION

For Claimant, Coral Wavro ("Wavro"): Adam Smith of Investors Arbitration Services, Inc.

For Respondents, Gruntal & Co., Inc. ("Gruntal") and Steven Racher ("Racher"): Kimberly Unger, Esq. of Gruntal & Co., Inc.

CASE INFORMATION

Statement of Claim filed: February 25, 1993.

Claimant's Submission Agreement signed on: February 2, 1993.

Statement of Answer filed by Respondent, Gruntal, on: April 29, 1993.

Respondent, Gruntal did not file a Submission Agreement.

Statement of Answer filed by Respondent, Racher, on: April 13, 1993.

Respondent, Racher's Submission Agreement signed on: April 12, 1993.

HEARING INFORMATION

On January 14, 1994 and February 25, 1994, in Ft. Lauderdale, Florida, hearings lasting four (4) sessions were held.

CASE SUMMARY

Claimant, alleged that, Respondent, Gruntal through its agent, Racher, sold two inappropriate investments to claimant, American Income Partners V Limited Partnership ("AIP") and TCBY stock; Respondents deliberately or negligently omitted material risk factors of the investments and failed to recommend suitable investments in light of Claimant's age, income, sophistication, risk tolerance and clearly stated objectives. Claimant alleged the following violations in connection with the purchase of said securities: Fraud, Deceit and Omission of Material Fact; Suitability; Florida Statute 517; Breach of Fiduciary Duty; and, Negligent Misrepresentation.

Respondent Gruntal, alleged that recommendations were made in line with Claimants objective of income; Claimant discussed the investment with Mr. Racher prior to investing and all material facts were provided to Claimant; Claimant was provided with a prospectus and was given an opportunity to speak with a representative of American Finance Group prior to her decision to invest; Claimant indicated that she desired to invest in a growth stock and was provided a recommendation of TCBY stock consistent with her request; Claimant accepted that recommendation voluntarily and Respondent, Gruntal, can not be held responsible for market fluctuations. Respondent, Gruntal, set forth the affirmative defenses of, Ratification and Failure to state a cause of action.

Respondent Racher, Denied all of Claimant's allegations of negligence, fraud and deceit; Racher alleged that Claimant was a knowledgeable and sophisticated investor and that all recommendations and purchases were made in accordance with claimant's objectives and at Claimant's direction; all relevant and required disclosures were made to Claimant and she understood all information provided to her.

RELIEF REQUESTED

Claimant requested: Recision of her investment in AIP and return of her \$20,000 original investment and Compensatory damages for the loss in TCBY in the amount of \$ 1,259.27 or; in the alternative, Compensatory damages in the amount of \$13,659.27; plus, pre and post award interest as allowed by law; cost of this arbitration including reasonable fees and costs and, punitive damages.

Respondents requested: Dismissal of all claims and reimbursement for attorneys fees 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. Respondent, Racher, is found not liable and therefore, all claims against him are hereby dismissed.
2. Respondent, Gruntal, is found liable and shall pay to the Claimant the amount of \$5,000.
3. Claimant's request for attorneys' fees, punitive damages and interest is hereby denied.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees of \$1,600 (4 sessions X 400 each).

1. Claimant is assessed forum fees in the amount of \$400 for which the NASD shall retain the \$400 previously deposited in full satisfaction thereof.
2. Respondent, Gruntal, is hereby assessed forum fees in the amount of \$1,200 payable to the National Association of Securities Dealers, Inc.

3. The NASD shall retain the non-refundable filing fee of \$100 paid by the Claimant.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/

Louise T. Jeroslow, Esq.

Public/Chairperson

/s/

John G. Service, Esq.

Public/Panelist

/s/

Jack C. Aycok

Industry/Panelist

Date of Decision: April 4, 1994