

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Estate of George W. Feltyberger, Sr.

93-00903

Name of Respondents

Gruntal & Co., Inc.
Regional Clearing Corp.
Kashner Davidson Securities Corporation

Name of Third Party Respondent

George W. Feltyberger, Jr.

REPRESENTATION

For Claimant, David A. Steves, Esq., as personal representative of the Estate of George W. Feltyberger, Sr. ("Feltyberger Sr."), Kalju Nekvasil, Esq. of Goodman & Nekvasil, P.A., of Safety Harbor, Florida.

For Respondents, Gruntal & Co., Inc. ("Gruntal"), Regional Clearing Corp. ("Regional"), and Kashner Davidson Securities Corp. ("Kashner"), William T. Kirtley, Esq., P.A., and John P. Graves, Jr. Chartered, of Sarasota, Florida.

Third Party Respondent, George Feltyberger Jr. ("Feltyberger Jr.") was pro se.

CASE INFORMATION

Statement of Claim filed: March 3, 1993. Claimant's Submission Agreement signed: March 3, 1993 by David A. Steves, Esq. as Personal Representative of the Estate of George W. Feltyberger, Sr.

Joint Statement of Answer and Third Party Claim filed by Respondents, Gruntal, Regional, and Kashner, on May 19, 1993. Respondent, Kashner's Uniform Submission Agreement signed June 9, 1993, by Victor L. Kashner, on behalf of Kashner Davidson Securities Corp.

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Respondents, Gruntal and Regional failed to sign submission agreements as required by Section 12 of the NASD Code of Arbitration Procedure ("Code")(see "Other Issues").

Third Party Respondent, Feltyberger Jr., failed to file an Answer or to sign a submission agreement as required by Sections 12 and 25 of the Code. (see "Other Issues")

HEARING INFORMATION

On May 25, 1994, in Ft Lauderdale, Florida, a pre-hearing conference lasting one (1) session was conducted with the Chairman.

On September 9, 1994 and May 9, 10, 11, 12, and 31, 1995, in Ft. Lauderdale, Florida, hearings lasting twelve (12) sessions were conducted.

CASE SUMMARY

Claimant alleged that: Gruntal, Regional and Kashner sold securities to Feltyberger Sr. that were unsuitable for him in view of his age, health, investment objectives, financial situation and needs. Claimant also alleged that these transactions were excessive, that the account should not have been margined, and that the account was improperly opened. Claimant alleged that Respondents' actions constituted breach of contract, common law fraud, breach of fiduciary duty, negligence and gross negligence.

Respondents alleged that: they were under no duty of any kind whatsoever with respect to the account established in that all investment power with respect to the account was vested in Feltyberger Jr.; that Respondents made no investment recommendations whatsoever with respect to the purchases and sales of securities which occurred in the account during the time that it was maintained by Feltyberger Jr. with Kashner; that the only remedy available to Claimant would lie as a result of the assertion of a claim against Feltyberger Jr., the guardian of Feltyberger Sr.; that the claims asserted by the Claimant in the Statement of Claim were time barred by virtue of the application of applicable statutes of limitations; and that as a matter of Florida law, the duties and responsibilities of a guardian could not be imposed upon any or all of the Respondents but were solely those responsibilities and duties vested by virtue of judicial action undertaken and carried out by courts sitting in Florida having jurisdiction over guardianship matters. The Respondents also asserted a Third Party Claim against Feltyberger Jr..

Third Party Respondent, Feltyberger Jr. did not provide an Answer or mount any defenses with respect to the Third Party Claim and did not appear at the hearing.

RELIEF REQUESTED

Claimant requested actual damages of \$175,000.00, pre-judgment interest at the rate of 12 % per annum from the date of purchase, punitive damages, and such other relief as is deemed necessary and proper.

Respondents requested dismissal of the claim and filed a Third Party Claim requesting that any damages awarded against them to Claimant be awarded against Feltyberger Jr. to Respondents

OTHER ISSUES CONSIDERED & DECIDED

1. 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 original(s) remain on file with the NASD.
2. Respondents' Motion to take Feltyberger Jr.'s deposition was denied.
3. Claimant's Motion to Strike Carl Robie's testimony was denied.
4. Claimant's request that the panel refer Victor Kashner's denial of guilt to previous NASD compliance charges was denied.
5. Respondents, Gruntal and Regional failed to file submission agreements as required by Section 12 of the Code, Gruntal and Regional being NASD member firms at the time the facts giving rise to the controversy occurred.
6. The panel found that Third Party Respondent, Feltyberger Jr. was required to sign a submission agreement and to file a Statement of Answer pursuant to Sections 12 and 25 of the Code, the panel finding that there was an agreement to arbitrate between Feltyberger Jr. and Respondents.

AWARD

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

1. Respondents, Gruntal, Regional and Kashner are found liable, jointly and severally, and shall pay to Claimant the amount of \$218,669.00 inclusive of interest from February 21, 1991

to May 31, 1995.

2. Respondents, Kashner and Gruntal are also found liable for punitive damages and shall pay to Claimant the additional amount of \$50,000.00. The panel bases its authority to award punitive damages on the Federal Arbitration Act and the applicable case law. The panel finds that the actions of Kashner were so egregious as to warrant an award of punitive damages.

3. Respondents, Kashner, Gruntal and Regional are also found liable for Claimant's attorney's fees. The panel leaves the amount of such attorney's fees to be determined by an appropriate court of competent jurisdiction.

4. Third Party Respondent, Feltyberger Jr. is found liable on the Third Party Claim and shall pay to Respondents, Gruntal, Kashner and Regional the amount of \$218,669.00.

OTHER COSTS

Other than the Forum Fees noted below, 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 in the amount of \$9,300.00 (12 session x \$750.00 per session plus one prehearing conference with a single arbitrator x \$300.00).

1. Claimant, Feltyberger Sr. is hereby assessed forum fees in the amount of \$1,500.00 for which the NASD shall retain the \$1,050.00 previously deposited by Claimant, leaving a balance due the NASD of \$450.00.

2. Respondents, Kashner, Gruntal and Regional are hereby assessed, jointly and severally, forum fees in the amount of \$7,800.00 for which the NASD shall retain the \$750.00 previously deposited by Respondents leaving a balance due the NASD of \$7,050.00.

3. The NASD shall retain the \$200.00 nonrefundable filing fee previously paid by Claimant.

4. The NASD shall retain the nonrefundable filing fee of \$500.00 previously paid by Respondents.

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5. Respondents, Gruntal, Regional, and Kashner are hereby assessed \$750.00 for the postponement of the April, 1994 hearing dates which amount was invoiced on March 17, 1994.

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

Concurring Arbitrators' Signatures

Name

Public/Industry

/s/
Harold M. May

Public/Chairperson

/s/
Hurley P. Whitaker, Esq.

Public/Panelist

/s/
Roderic A. Johnson

Industry/Panelist

Date of Decision: August 28, 1995