

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant

Lingsch Family Trust  
Edwin & Ann Lingsch, Trustees

NASD Arbitration  
No. 93-00941

Name of Respondents

Gruntal & Co., Inc.  
Scott R. Udine  
Lyle Gary  
Frank Napolitano  
Tom Connell

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REPRESENTATION

For Claimant: Richard Sacks - Investors Recovery Services

For Respondents: W. Reece Bader, Esq. - Orrick Herrington & Sutcliffe - New York, New York

CASE INFORMATION

Statement of Claim filed: March 12, 1993

Claimant's Submission Agreement signed: February 16, 1993

Statement of Answer filed by Respondents: July 6, 1993

Submission Agreement signed by Respondent, Thomas J. Connell on July 6, 1993

Submission Agreement signed by Respondent, Scott Udine on July 1, 1993

Submission Agreement signed by Respondent, Lyle Gary on July 1, 1993

## HEARING INFORMATION

Pre-Hearing Conference Date / Session: One - November 8, 1993

Hearing Dates / Sessions: January 10, 1994 - Two Sessions  
January 11, 1994 - Two Sessions  
January 12, 1994 - Two Sessions  
January 13, 1994 - Two Sessions  
January 25, 1994 - Two Sessions  
January 26, 1994 - Two Sessions  
January 27, 1994 - Two Sessions  
January 28, 1994 - Two Sessions

Hearing Location: San Francisco, California

## CASE SUMMARY

Claimants, Trustees of the Lingsch Family Trust, alleged that Respondent, Scott Udine, while employed by Respondent, Gruntal & Co., Inc. excessively traded the Trustor's account causing a net loss of approximately \$527,000.00. It is also alleged that the trading was primarily in unlisted securities in which Gruntal was a market maker. It is also alleged that Udine recklessly mismanaged the Trustor's account for the sole purpose of generating commissions. Claimants also claim against Respondents, Lyle Grey, Frank Napolitano and Tom Connell for failure to properly supervise Udine.

Respondents, answering jointly, alleged that the Claimant's losses were not caused by any act or omission by Respondents; rather the losses appear to be due to market activity in the types of securities purchased and sold and Claimant's own trading directives, activities and objective over which Respondents had no control and for which Respondents are not responsible. Claimant had assumed those risks for several years, during which time profits and losses occurred, and continued to assume them while the account was at Respondent Gruntal. Respondents Grey, Napolitano and Connell deny each and every allegation of failure to supervise.

## RELIEF REQUESTED

Claimants, as Trustees, seek to recover losses of \$567,000.00, punitive damages and recovery fees.

Respondents seek dismissal of the claim in its entirety.

### OTHER ISSUES CONSIDERED AND DECIDED

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 original remains 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, Scott R. Udine is solely liable and shall pay to Claimant, Lingsch Family Trust, the sum of Fifty Five Thousand Dollars and No Cents. (\$55,000.00)
2. Respondent, Lyle Gary, is solely liable and shall pay to Claimant, Lingsch Family Trust, the sum of Fifteen Thousand Dollars and No Cents (\$15,000.00).
3. Respondent, Gruntal & Co., Inc. is solely liable and shall pay to Claimant, Lingsch Family Trust, the sum of Fifty Five Thousand Dollars and No Cents. (\$55,000.00)
4. Claimant's claim for punitive damages is denied.
5. The parties shall each bear their respective costs and fees, including attorney/recovery fees.
6. Each and every claim of Claimant against Respondent Tom Connell is dismissed.
7. Each and every claim of Claimant against Respondent Frank Napolitano is dismissed.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

TOTAL FEES ASSESSED: \$16,300.00

One Pre-Hearing session: \$300.00  
Sixteen Hearing sessions: \$16,000.00

1. Respondent, Gruntal & Co., Inc. is solely assessed the sum of \$8,150.00 representing one-half of the total assessment.

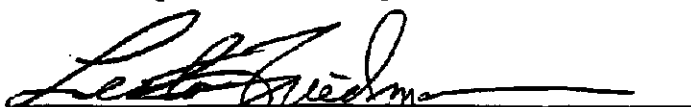
2. Claimant, Lingsch Family Trust, is assessed the sum of \$7,150.00 representing one-half of the total fees assessed less credit for the \$1,000.00 previously deposited with the NASD.

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

### ARBITRATORS

<u>Name</u> .....	<u>Public / Industry</u>
F. Richard Middaugh	Public
Roy Panelli	Securities
Lester Friedman	Public

### Concurring Arbitrators' Signatures



Lester Friedman

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F. Richard Middaugh

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Roy Panelli

Date of Decision: 2-8-94

Date Served: 02/14/94