

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Roland R. Fleming and Darlene M. Fleming

93-00985

Name of Respondents

Kennedy, Cabot & Company
Gruntal & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 15 1993, Claimants Roland and Darlene M. Fleming who appeared pro se, alleged that Respondents Kennedy, Cabot & Company and Gruntal & Co., Inc. failed to use a reasonable and adequate degree of care as agents by making a purported payment for the purchase of MYM Liquidating Trust, despite the fact that the Trust had terminated, and alleged further that the Respondent failed to disclose information regarding UNR Industries Inc. stock, causing them to lose monies. The Claimants contended they would not have sold these shares had the respondents disclosed the material fact that this transaction was in breach of their duties and obligations as their agents under California Law.

Respondents Kennedy, Cabot & Company and Gruntal & Co., Inc. in a joint statement of answer through in-house representative George H. Kupper, Esq., maintained that Respondent Kennedy, Cabot & Company is a discount brokerage firm that does not offer advice concerning the purchase and sale of stocks and options, and that Respondent Gruntal & Co., Inc. merely acts as its clearing agent, with no responsibility for providing the kind of information the claimants are alleging, and that therefore, neither Respondent should be held liable in this matter.

RELIEF REQUESTED

Claimant, Ronald and Darlene Fleming requested \$3,853.00 in actual damages, plus an additional \$3,080.00 in actual damages, along with costs and attorneys' fees.

Respondents Kennedy, Cabot & Company and Gruntal & Co., Inc. requested that the claims of the claimants be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William R. Newsome, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 26, 1993 and by the Respondents Kennedy, Cabot & Co. on May 24, 1993 and by Respondent Gruntal and Co. on June 18, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Claims of the Claimants Roland R. Fleming and Darlene M. Fleming against Respondents Kennedy, Cabot & Co. and Gruntal & Co. are dismissed in their entirety.
2. The parties shall bear their respective costs and attorney's fees.
3. The \$150 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD.

AFFIRMATION

I, William R. Newsome, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.


Signature of Arbitrator

DATED OF DECISION:

28 July, 1993

DATED BY THE NASD, INC.: August 31, 1993