

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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In the Matter of the Arbitration Between

**Name of Claimant**

William W. Curran  
as Trustee for Doreen S. Jansky

Case #  
93-01323

vs.

**Name of Respondents**

Gruntal & Co., Inc.  
James Walsh  
Al Fagan

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**REPRESENTATION**

For Claimant, William W. Curran a Trustee on behalf of Doreen S. Jansky, ("Claimant") Michael Unger, Esq. from the law firm of Goldstein & Manello, P.C. located in Boston, Massachusetts.

For Respondents, Gruntal & Co., ("Gruntal") and Al Fagan ("Fagan") (collectively "Respondents"), Gerald F. Rath, Esq. from the law firm of Bingham Dana & Gould located in Boston, Massachusetts.

For Respondent, James Walsh ("Walsh"), Richard M. Gelb, Esq. from the law firm of Gelb & Gelb located in Boston, Massachusetts.

**CASE INFORMATION**

Statement of Claim was filed on March 31, 1993.  
Claimant's Submission Agreement was signed on March 19, 1993.

Joint Statement of Answer was filed by Respondents Gruntal, Fagan and Walsh on May 21, 1993.

Gruntal's Submission Agreement was signed on May 21, 1993.  
Fagan's Submission Agreement was signed on May 26, 1993.  
Walsh's Submission Agreement was signed on May 26, 1993.

### **HEARING INFORMATION**

Pre-Hearing Conference: March 15, 1994 - 1 session

Hearing Dates/Sessions: January 27, 1994 - 1 session  
December 15, 1994 - 1 session

Hearing Location: American Arbitration Association located at 133 Federal Street Boston, Massachusetts.

### **CASE SUMMARY**

Claimant in his pleadings states that he commenced this arbitration to obtain damages for out-of-pocket losses in the amount of \$165,782.00. Claimant alleges that these damages resulted from the violation of federal and state securities laws and regulations and violations of the rules of the National Association of Securities Dealers, Inc. ("NASD"). Claimant also alleges that losses also occurred as a result of churning, unsuitable transactions, lack of supervision of Walsh, undue concentration in certain securities, excessive margining of the account and numerous violations of the NASD Rules of Fair Practice and fraudulent conduct in violation of Section 10b and Rule 10b-5 of the Securities and Exchange Act of 1934 and of the Massachusetts Uniform Securities Act, Section 101 of Chapter 110A.

Claimant requests that this panel award him \$165,782.14 in out-of-pocket losses; money he would have earned had Respondents handled his account properly; \$2,500,000 for emotional harm and distress plus medical and related expenses; \$497,347.32 in punitive damages; attorneys' fees, costs and expenses including filing and forum fees.

Respondents deny all allegations of wrongdoing and deny liability. Respondents asserts that Claimant represented to Walsh that he was a knowledgeable investor who had a substantial income of \$260,000 and a life insurance policy of \$2.8 million cash surrender value. Respondents also assert that Claimant executed a margin agreement and fiduciary agreement authorizing him to trade in the two trust accounts maintained at the firm and indicated that his investment objectives were growth, capital gain and speculation. Respondents maintain that Claimant purchased Maxus Energy on margin and failed to meet margin calls which resulted in the liquidation of the Securities at a loss to Claimant.

Respondents request that the Statement of Claim be dismissed in its entirety with costs and reasonable attorneys' fees awarded to Respondents.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies and

agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

### **MOTION FOR ENTRY OF AWARD**

By letter dated June 24, 1994, Claimant filed a Notice of Dismissal with the NASD as to Respondent Fagan. Claimant also informed the NASD that he had settled this matter with the remaining Respondents. Claimant thereafter filed a Motion for Entry of Award Against Respondent Walsh Enforcing Claimant's and Walsh's Settlement Agreement and General Release executed July 7, 1994. Claimant alleges that Walsh entered into this Agreement in bad faith and fraudulently induced Claimant to enter into the Agreement.

Claimant requests an award in the settlement amount, \$104,000, interest at a rate of twelve percent (12%) per annum from the date payment was due, \$47,171.97 in attorney's fees and expenses incurred in pursuing this claim against Walsh prior to the entering, and in connection with negotiating and entering, and in connection with attempting to collect and enforce the Settlement Agreement. Claimant also requests an award of punitive damages against Walsh for entering into the Settlement Agreement in bad faith and fraudulently inducing Claimant to enter into the Agreement in violation of Article III, Section I of the NASD Rules of Fair Practice. Claimant further requests that the Panel refer this matter to the District Business Conduct Committee for appropriate disciplinary action.

Respondent Walsh filed his opposition to Claimant's Motion For Entry of an Award against him and his objection to the arbitration Panel considering said motion on November 9, 1994. Walsh states that such a motion and the other relief requested were not provided for in the Settlement Agreement. Walsh also states that any alleged breach of the Settlement Agreement by him should be the subject of a separate claim and he should be allowed a fair hearing on the merits. Respondent Walsh denies the allegations of fraud in the inducement and bad faith.

### **AWARD**

After considering the pleadings, arguments, testimony and other evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Pursuant to a written agreement of the parties discussed at the hearing on December 15, 1994 and which is incorporated by reference, the panel makes the following award against Walsh and in favor of Claimant:

- a) \$104,000 representing the principal amount due under the Settlement Agreement dated July 7, 1994;
- b) \$7,358 representing attorney's fees incurred by the Claimants from and after the

date that the first payment was due under the Settlement Agreement dated July 7, 1994 through the date hereof in attempting to collect funds due from Walsh under the Settlement Agreement dated July 7, 1994;

- c) \$3,640 representing interest at the rate of 12% per annum on the overdue payments from their due dates through the date hereof;
- d) An amount equal to interest at the rate of 12% per annum on Walsh's obligations set forth in paragraphs (a), (b) and (c) above, from the date hereof through the date of final payment; and
- e) An amount equal to any additional reasonable attorney's fees incurred by the Currans after the date hereof in enforcing the Award, including but not limited to, attorney's fees relating to securing the payments due from Walsh and relating to any action taken by the Currans in a Court of law to enforce the Award.

#### FORUM FEES

Pursuant to Section 44(c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

Non-refundable Filing Fee - \$250.00

Pre-Hearing Session Fee - \$300.00

Hearing Session Fees - \$2,000.00 (2 sessions at \$1,000.00 per session)

Total Fees = \$2,550.00


- 1) Forum fees attributable to proceedings up to and including January 27, 1994 are to be apportioned and assessed equally among Respondents Walsh, Fagan and Gruntal & Co., Inc.. Forum fees attributable to proceedings after January 27, 1994 are assessed to Walsh.
- 2) Claimant previously paid \$1,250.00 and is entitled to a refund in that amount.
- 3) Gruntal is assessed \$516.66.
- 4) Fagan is assessed \$516.66.
- 5) Walsh is assessed \$516.67. Walsh is further assessed \$1,000.00 in forum fees. Walsh shall satisfy the fees assessed by reimbursing Claimant \$1,250.00 and by remitting the balance \$266.67 to the NASD.

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

**ARBITRATION PANEL**

Edward O. Proctor, Esq.	-	Public Chairperson
Matthew R. Gilson, Esq.	-	Public Panelist
Jack A. Marshall	-	Industry Panelist

Concurring Arbitrator's Signature

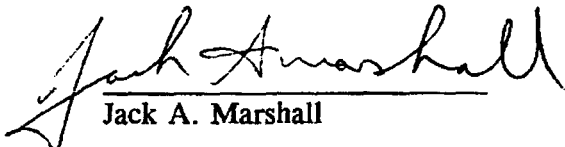
  
Edward O. Proctor, Esq.

Date of Decision: February 10, 1995

**ARBITRATION PANEL**

Edward O. Proctor, Esq.	-	Public Chairperson
Matthew R. Gilson, Esq.	-	Public Panelist
Jack A. Marshall	-	Industry Panelist

Concurring Arbitrator's Signature

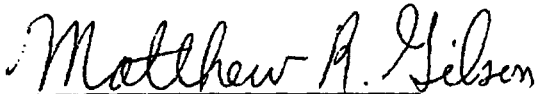
  
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Matthew R. Gilson, Esq.	-	Public Panelist
Jack A. Marshall	-	Industry Panelist

Concurring Arbitrator's Signature

  
Matthew R. Gilson, Esq.

Date of Decision: February 10, 1995

## **AGREEMENT TO ENTER AN AWARD**

This Agreement ("Agreement") is made and entered into this 15<sup>th</sup> day of December, 1994 by and between William W. Curran, individually and in his capacity as Trustee U/D/T DTD. 5 S/91 F/B/O Doreen S. Jansky, and Doreen S. Jansky (collectively "the Currans") and James J. Walsh ("Walsh").

**WHEREAS**, the Currans and Walsh entered into a Settlement Agreement and General Release dated as of July 6, 1994 (the "Settlement Agreement") which, among other things, obligated Walsh to make payments to the Currans in the aggregate sum of One Hundred Four Thousand Dollars (\$104,000); and

**WHEREAS**, Walsh has failed to make any payments to the Currans as required by the Settlement Agreement; and

**WHEREAS**, the Currans and Walsh have agreed that they will jointly request the NASD Arbitration Panel to enter an award in favor of the Currans which contain the terms as set forth in this Agreement.

**NOW, THEREFORE**, the Currans and each of them and Walsh agree and covenant as follows:

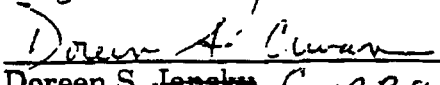
1. **Entry of Award.** The Currans and Walsh shall jointly request that the NASD Arbitration Panel enter an award (the "Award") against Walsh and in favor of the Currans as follows:
  - (a) \$104,000 representing the principal amount due under the Settlement Agreement;
  - (b) \$7,358 representing attorney's fees incurred by the Currans from and after the date that the first payment was due under the Settlement Agreement through the date hereof in attempting to collect funds due from Walsh under the Settlement Agreement;
  - (c) \$3,640 representing interest at the rate of 12% per annum on the overdue payments from their due dates through the date hereof;
  - (d) An amount equal to interest at the rate of 12% per annum on Walsh's obligations set forth in paragraphs (a), (b) and (c) above, from the date hereof through the date of final payment; and



- e) An amount equal to any additional reasonable attorney's fees incurred by the Currans after the date hereof in enforcing the Award, including but not limited to, attorney's fees relating to securing the payments due from Walsh and relating to any action taken by the Currans in a court of law to enforce the Award.
2. Enforcement of Award. Notwithstanding Section 2 of the Settlement Agreement, the parties agree that the Currans shall be entitled to enforce the Award after thirty (30) days from the date of entry of the Award by the National Association of Securities Dealers by commencing an action in any court of competent jurisdiction.
3. Payment Due the Currans. The payments referred to in paragraph 1 above shall be made in the form of certified checks to "Goldstein & Manello, P.C., attorneys for William W. Curran." Said checks will be delivered to Goldstein & Manello, P.C., Attention: Michael Unger, Esq.
4. The Tapes. The original and all copies of tape recordings and transcripts of tape recordings that were delivered to Richard M. Gelb ("Gelb"), counsel for Walsh, pursuant to Section 11 of the Settlement Agreement, shall continue to be held in escrow until all of the payments set forth in paragraph 1 above have been made.
5. Notice of Dismissal. Any Notice of Dismissal prepared pursuant to Section 5 of the Settlement Agreement has no further force or effect.
6. Obligations Under the Settlement Agreement. Upon payment of the Award at any time by Walsh, the rights and obligations under the Settlement Agreement shall become effective with respect to all of the parties to said agreement.
7. Governing Law. This Agreement shall in all respects be interpreted, enforced and governed by the laws of the Commonwealth of Massachusetts.

**IN WITNESS WHEREOF**, the parties hereto have caused this Agreement to be executed as a contract under seal as of the date set forth above.

  
William W. Curran

  
Doreen S. Jansky

  
James J. Walsh

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 19, 1994

Then personally appeared before me the above-named William W. Curran and acknowledged the foregoing instrument to be his free act and deed, before me,

  
Notary Public

My Commission Expires:

21/12/95

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 19, 1994

Then personally appeared before me the above-named Doreen S. Jansky and acknowledged the foregoing instrument to be her free act and deed, before me,

  
Notary Public

My Commission Expires:

21/12/95

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

December 15, 1994

Then personally appeared before me the above-named James J. Walsh and acknowledged the foregoing instrument to be his free act and deed, before me,

  
Notary Public

My Commission Expires:

5/15/95