

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Jack and Rochelle Kluger

93-01996

Name of Respondent(s)

J. Gregory & Company, Inc.  
Michael Hundert

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**REPRESENTATION**

For Claimants: Joseph Zelmanovitz, Esq. of Stahl & Zelmanovitz.

For Respondents J. Gregory & Company, Inc. ("J. Gregory") and Michael Hundert ("Hundert"): Jeffrey S. Rosen, Esq. of De Martino Finklestein Rosen & Virga.

**CASE INFORMATION**

Statement of Claim filed: May 18, 1993.

Claimants' Submission Agreement signed on: May 17, 1993.

Joint Statement of Answer filed by Respondents, J. Gregory and Hundert on: July 12, 1993.

Respondent, Hundert's Submission Agreement signed on: July 12, 1993.  
Respondent, J. Gregory's Submission Agreement signed on: July 12, 1993.

### **HEARING INFORMATION**

Hearing Dates/Sessions: January 7, 1994/Two Sessions  
February 14, 1994/Two Sessions

Hearing Location: National Association of Securities Dealers, Inc., 33  
Whitehall Street, New York, New York

### **CASE SUMMARY**

Claimants alleged that they received numerous, unsolicited telephone calls from Hundert, an account executive at J. Gregory and responded each time by informing Hundert that they did not desire to invest. Claimants alleged that after solicitations, they were persuaded to place their trust in the respondents and opened an account with J. Gregory. Claimants alleged that Hundert persuaded them to purchase 2000 shares of Juniper Features Ltd. ("Juniper") at prices ranging from \$4/share to \$9.75/ share. Claimants alleged that In February of 1992, Hundert called Jack Kluger to report that the price of Juniper had reached \$14.25 /share. Claimants alleged that Jack Kluger then gave Hundert a firm order to sell all of the shares. Claimants alleged that shortly thereafter, they realized that Hundert did not sell their shares. Claimants alleged that Hundert further misrepresented that he was awaiting certain announcements to be made or events to occur which would cause the market price of Juniper to rise and that this is the reason that he did not execute the orders to sell the shares. In addition the Claimants alleged fraud, breach of Fiduciary duties, breach of contract and reckless supervision and respondent supervisor.

Respondents denied each and every allegation of wrongdoing alleged in the statement of claim. Respondents maintained that Claimants expressed a desire to liquidate the account positions when the value of the account dropped below \$100,00.00. As Hundert did not have discretionary control over Claimants' account, he contacted Claimants

when the account neared \$100,000.00. Respondents maintained that Hundert spoke to Claimants and Claimants said that they would think about what they wanted to do. Respondents further maintained that the Statement of Claim fails to state a claim upon which relief can be granted, all purchases were made with the authorization of Claimants and all such trades were responsible and suitable.

### **RELIEF REQUESTED**

Claimants requested:

1. compensatory damages in the amount of at least \$38,000.00;
2. punitive damages in an amount not less than \$25,000.00;
3. prejudgement interest; and
4. reasonable counsel and experts' fees, filing fees and the costs of this proceeding.

Respondents requested: that the Statement of Claim be dismissed and that they be awarded reasonable attorney's fees.

### **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.

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### 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. That all Claimants' claim be denied in their entirety.
2. That respondents' request for attorney's fees be denied.
3. That Respondents request for attorney's fees be denied.
4. That Claimant shall be liable for one-half of the forum fees associated with this arbitration.
5. That the respondents shall jointly and severally be liable for one-half the cost of this arbitration proceeding.
6. That the parties pay the cost of their own attorney's fees and expert witness fees'.

### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

non-refundable filing fee: \$150.00  
Hearing sessions fees: 4 sessions x \$500.00 = \$2,000.00.  
**TOTAL: \$2,150.00**

Forum fees Assessed Against:

- 1 Claimants shall pay the NASD the sum of \$1,075.00. to be off set by the \$650.00 already paid to the NASD as a \$150.00 hearing session deposit and a \$500.00 filing fee. Net due: \$425.00.
2. Respondents shall pay the NASD the sum of \$1,075.00.

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

Concurring Arbitrators' Signatures  
Name

Public/Industry

\_\_\_\_\_  
Robert Pincus, Esq.

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Public

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Joan Sterns-Johnson, Esq.

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Public Chairperson

\_\_\_\_\_  
Leon Goldsholl

\_\_\_\_\_  
Industry

Date of Decision: \_\_\_\_\_