

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Dorothy Hasson Hunter

93-02791

Name of Respondents

Gruntal & Co., Inc.  
Michael A. Largue

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**REPRESENTATION**

For Claimant Dorothy Hasson Hunter ("Hunter") appeared R. Jeffrey More, Esq. of the law firm Coleman & Rhine, New York City, NY.

For Respondent Gruntal & Company") appeared Eric S. Hutner, Esq. in-house counsel with Gruntal & Co, New York City, NY.

Respondent Michael A. Largue ("Largue") appeared pro se.

**CASE INFORMATION**

The Statement of Claim was filed on July 16, 1993 and the Claimant's Submission Agreement was signed on June 10, 1993.

The Statement of Answer filed by Respondent Gruntal & Co. was filed on September 16, 1993 and Respondent Gruntal & Co.'s Submission Agreement signed on September 14, 1993.

Respondent Largue did not file a Statement of Answer and did not execute a Submission Agreement.

**HEARING INFORMATION**

Hearing Dates/Sessions:	April 6, 1994	-	1 Session
	June 16, 1994	-	2 Sessions
	June 17, 1994	-	2 Sessions
	July 7, 1994	-	2 Sessions
	July 8, 1994	-	2 Sessions

August 5, 1994 - 2 Sessions

The hearing was held at the NASD offices located in New York City, NY.

### **CASE SUMMARY**

Claimant alleged that in or about December 1989, Claimant opened an account at Gruntal. It was also alleged that the account was to be serviced by Respondent Largue, a registered representative of Gruntal & Co. who had recently transferred over from another brokerage firm, at which Claimant maintained her account until it was transferred to Gruntal on Largue's recommendation. Claimant also alleged that Claimant's account was an IRA account, invested in dividend paying investments, upon the income from which Claimant relied in large part for her living expenses; that the account well exceeded \$300,000.00 in value; and that through Respondents' fraud, negligence, conversion, breach of fiduciary duties, breach of Contract and failure to meet basic and fundamental industry standards, the account was virtually wiped out.

Further, Claimant alleged that Largue sold Claimant interests in DIVALL limited Partnerships and Templeton Foreign Fund which were grossly unsuitable for Claimant; that Gruntal countenanced the sales through its complete failure to monitor the activities of its employee Largue and the activity in the Hunter account; and that Largue and Gruntal converted tens of thousands of dollars from Hunter's account and covered up the conversion for almost three years by fraudulently misrepresenting to Claimant on her account statements that the investment was still in her account.

Respondent Gruntal submitted that all of the Claims asserted should be dismissed in their entirety. Gruntal denied each and every allegation that it breached any duty owed to Claimant, that it engaged in any wrongful conduct, or that it harmed Claimant in any way. Gruntal submitted that at all times Gruntal met and exceeded all duties owed to Claimant, and that Gruntal is in no way liable for any losses that she incurred.

Respondent Gruntal maintained that Claimant's decision to make the investment and the actual purchase of the DiVall 2 limited partnership units occurred in October 1989, two months before Claimant became a Gruntal client. Therefore, Respondent Gruntal maintained that they are in no way responsible for the purported unsuitability of an investment that was recommended by the employee of another brokerage firm. Respondent Gruntal also maintained that given the turbulence created in the weeks and months following the invasion of Kuwait, the recommendation that Claimant invest in DiVall 3 was appropriate at the time it was made.

Moreover, Respondent Gruntal maintained that Claimant purchased shares of Templeton Foreign Fund before she became a Gruntal client; that in May 1990, those shares were sold; and that the total proceeds from the sale of Templeton Foreign Fund were properly credited to the Claimant's account. Thereafter, Respondent maintained, the proceeds of the Templeton sale were used to purchase other securities; that the Templeton shares appeared on the account statements as one of Claimant's holdings after they were sold; and that as result, Claimant's account equity was overstated until the error was discovered and corrected.

As for their affirmative defenses, Gruntal asserted the doctrine of laches, Claimant's failure to mitigate her damages, and that the applicable Statute of limitations had run. Respondent Gruntal further maintained that there is no private right of action under NYSE and NASD rules.

Respondent Gruntal asserted a cross-claim against co-respondent Michael Largue for contribution and/or indemnity. Respondent maintained that the cross-claim is predicated on the fact that Largue was the Gruntal registered representative who dealt with the Claimant during the time the events in question transpired. Respondent Gruntal also maintained that co-respondent Largue had the principal responsibility for servicing the account and for recommending suitable investments.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

This panel finds that Respondent Michael A. Largue was required to sign a submission agreement pursuant to Sections 12 and 25 of the Code of Arbitration Procedure, Michael A. Largue being associated with an NASD member firm at the time this controversy arose. This panel finds that it has jurisdiction over Respondent Largue pursuant to Section 12 of the Code of and pursuant to the Form U-4 executed by Respondent Largue.

#### **RELIEF REQUESTED**

Claimant requested an award as follows:

- A. On the Divall 2 claim Claimant requested compensatory and/or rescission damages in the amount of \$200,000.00 with interest from June 1992, punitive damages in the amount of One Million Dollars, reasonable attorneys' fees and reimbursement of all costs and expenses associated with this arbitration.
- B. On the DiVall 3 claim Claimant requested compensatory and/or rescission damages in the amount of \$107,000.00 with interest

from August 1990, punitive damages in the amount of One Million Dollars, reasonable attorneys' fees and reimbursement of all costs and expenses associated with this arbitration.

- C. On the Templeton claim Claimant requested compensatory damages in the amount of \$36,000.00 with interest from May 1990, punitive damages in the amount of \$180,000.00, reasonable attorneys' fees and reimbursement of all cost and expenses associated with this arbitration.

Respondent Gruntal requested:

- A. That the Statement of Claim be dismissed in its entirety as against Gruntal;
- B. That Gruntal be awarded the costs and disbursement of this action, including attorneys' fees; and
- C. That the arbitration panel award such other relief as deemed just and proper.

Respondent Gruntal also requested an award against Respondent Largue for contribution and/or indemnity should Gruntal be held liable to the Claimant as a result of any action taken or not taken by Largue, any failure to act by Largue, or any misrepresentation or omission of fact by Largue, that results in the entry of a monetary award against Gruntal in connection with any of the claims asserted jointly against both respondents.

Respondent Largue requested that the claim be dismissed in its entirety.

### **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. Respondents Gruntal & Co. and Largue be and hereby are, jointly and severally, liable and shall pay to the Claimant the sum of \$285,000.00, interest specifically excluded.
- 2. Claimant Hunter be and hereby is directed to surrender to Respondent Gruntal & Co. her entire position in the DiVall limited

partnerships held in her account at Gruntal & Co.

3. All claims for punitive damages be and hereby are denied.
4. All other claims be and hereby are denied.
5. Respondents Gruntal and Lague be and hereby are liable and shall reimburse Claimant the sum of \$1,250.00 representing forum fees previously deposited by Claimant with the NASD.
6. Each party shall bear their respective costs, including attorneys' fees.

**FORUM FEES**

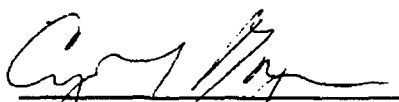
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

11 Sessions x \$1,000.00 = \$11,000.00 - \$1,750.00 previously deposited as hearing session deposits = \$9,250.00

Respondents be and hereby are liable, jointly and severally and shall pay to the NASD the sum of \$9,250.00 representing outstanding forum fees.

Fees are payable to the National Association of Securities Dealers, Inc.  
Concurring Arbitrators' Signatures

Concurring Arbitrators' Signatures  
Name

  
Cynthia L. Boyce, Esq.

Public

\_\_\_\_\_  
Joseph B. Russell, Esq.

Public

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Faith E. Carney, Esq.

Industry

Date of Decision: October 4, 1994

STATE OF NY

COUNTY OF NY

On this 30<sup>th</sup> day of September, 1994, before me personally appeared Cynthia Boyd known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 1996

partnerships held in her account at Gruntal & Co.

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6. Each party shall bear their respective costs, including attorneys' fees.

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Concurring Arbitrators' Signatures  
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Cynthia L. Boyce, Esq.

Public

  
\_\_\_\_\_  
Joseph B. Russell, Esq.

Public

\_\_\_\_\_  
Faith E. Carney, Esq.

Industry

Date of Decision: October 4, 1994

STATE OF NY

COUNTY OF NY

On this 29 day of September 1994, before me personally appeared Joseph Russell known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Deborah De Jesus

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 1996

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

Concurring Arbitrators' Signatures

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Name

\_\_\_\_\_  
Cynthia L. Boyce, Esq.

Public

\_\_\_\_\_  
Joseph B. Russell, Esq.

Public

*Faith E. Carney*  
\_\_\_\_\_  
Faith E. Carney, Esq.

Industry

Date of Decision: October 4, 1994

STATE OF New York  
COUNTY OF NY

On this 28 day of September, 1994, before me personally appeared Faith Carey known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS  
Notary Public, State of New York  
No. 02DE5022979  
Qualified in New York County  
Commission Expires January 24, 1996