

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Albin K. Leipold

vs.

CASE NO.  
93-02803

Name of Respondents

Gruntal & Co., Inc.  
Susan Mahan f/k/a Susan Franks

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**REPRESENTATION**

For Claimant Albin K. Leipold ("Leipold") appeared Christopher J. Calabrese, Esq., of Elliott, Stern, Calabrese & Higgins located in Buffalo, New York.

For Respondent Gruntal & Co., Inc., ("Gruntal") appeared William McGuinness, Esq., of Fried Frank Harris Shriver & Jacobson located in New York, New York.

Respondent Susan Mahan f/k/a Susan Franks ("Mahan") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on: July 16, 1993  
Claimant's Submission Agreement signed on: July 9, 1993.

Statement of Answer filed by Respondent Gruntal on: September 8, 1993.  
Respondent Gruntal's Submission Agreement signed on: August 19, 1993.

Statement of Answer filed by Respondent Mahan on: September 9, 1993.  
Respondent Mahan's Submission Agreement signed on: September 7, 1993.

**HEARING INFORMATION**

Hearing Dates/Sessions:	September 20, 1994	-	2 sessions
	September 21, 1994	-	2 sessions
	October 18, 1994	-	2 sessions
	October 19, 1994	-	2 sessions
	July 12, 1995	-	2 sessions
	July 13, 1995	-	2 sessions
	October 24, 1995	-	2 sessions
	October 25, 1995	-	2 sessions
	October 26, 1995	-	1 session

The hearings were at the Holiday Inn and Hyatt Regency Buffalo located in Buffalo, New York.

### CASE SUMMARY

Claimant alleged that Mahan breached the confidence and trust that had developed between them over a period of ten years. According to Leipold, Mahan willfully and recklessly disregarded his interests by recommending unsuitable investments, and by misrepresenting the nature of those investments. In addition, the Claimant maintained that Respondent Mahan's trading strategy generated excessive commissions. For example, the Claimant contended that from November 8, 1988 through March 12, 1991 the commissions paid to Mahan totalled \$176,715 and the margin interest totalled \$253,725, while the average equity in the account during this period was \$614,330.00. It was further alleged by the Claimant that Respondent Mahan's control over Leipold was so complete and pervasive that he could not formulate the command to end the relationship created by Mahan. Leipold also alleged that Respondent Gruntal failed to take affirmative steps to establish the sophistication and financial ability of Mr. Leipold to engage in the type of trading taking place. In addition, the Claimant contended that Respondent Gruntal failed to supervise Mahan's handling of his account. The following legal claims were asserted by the Claimant: breach of contract; breach of the duty to use reasonable care; breach of fiduciary duty; common law fraud; and violations of federal and state securities laws.

Respondent Gruntal alleged that Leipold was a knowledgeable investor with substantial assets who made all the investment decisions. Gruntal maintained that prior to Leipold making his investment decisions, Mahan and Leipold had thorough discussions and, therefore, Leipold understood and knew of the risks and costs and profits and losses associated with each of his transactions. Moreover, Gruntal denies that Mahan mislead the Claimant, and averred that Mahan provided Leipold with full and complete information concerning the nature of each investment, the degree of risk inherent in each investment and the liquidity or lack of liquidity in each investment.

The following affirmative defenses were asserted by Respondent Gruntal: 1) no basis exists for any claim for lack of supervision or for any punitive damages against Gruntal in this proceeding; 2) no basis exists for a claim for any losses incurred in connection with securities purchased at firms other than Gruntal; 3) no basis exists for any claim for attorneys' fees in this proceeding; 4) claim barred by the statute of limitations; 5) estoppel; 6) assumption of risk; 7) in the alternative, if there was some wrongful conduct, contributory negligence; and 8) Leipold failed to take reasonable steps to mitigate the alleged damages or losses suffered.

Respondent Mahan alleged that during the nine-year period that she was the Claimant's broker, the claimant never made any complaints. Mahan also denied that she violated any rules or regulations of any regulatory body with respect to her broker/client relationship with Leipold. Furthermore, Respondent Mahan maintained that the type of trading in the Claimant's brokerage account was suitable for the Claimant's speculative investment objective. Mahan also contended that throughout her business relationship with Leipold she never used "insistence" or "pressure" in any regard. Moreover, Mahan denied that she ever "controlled" the Claimant in any way. In addition, Mahan maintained that she informed the Claimant of all the risks associated with owning each company, as in the case of a new issue, and that at no time was there ever any material misrepresentations or omissions. Respondent Mahan also alleged that there was never any breach of trust or fiduciary responsibility on her part in her business relationship with the Claimant, and that there was never any unauthorized trading in the Claimant's account. According to Mahan, her stock recommendations were based upon research recommendations of the firms at which she was employed and, not "inside information."

Respondent Mahan alleged the following affirmative defenses: 1) there is no basis for any claim regarding violation of any rules of the NASD, NYSE or any other regulatory body; 2) there is no basis for any claim regarding breach of fiduciary duty, excessive trading, unsuitable trading, or material misrepresentations and omissions; 3) proceeding is barred by the statute of limitations; 4) Leipold was entirely responsible for all decisions as to his account; 5) assumption of risk; 6) Leipold failed to exercise reasonable care with respect to the matters alleged in the Statement of Claim; and 7) Leipold failed to take reasonable steps to mitigate any losses which might have been incurred.

### **RELIEF REQUESTED**

Claimant demanded judgment against Gruntal and Mahan jointly and severally for:

- a. Out of pocket expenses in the amount of \$1,031,631.00;
- b. Market-adjusted damages in the amount of \$119,973.00;
- c. Interest on the sum of (a) and (b) above from November 8, 1988 through March 12, 1991 at 9%
- d. The Claimant's filing fee, hearing session deposit, and all forum fees;
- e. Punitive damages in the amount of \$4,454,812.00; and
- f. Such other relief as this arbitration panel deems just and proper.

Respondent Gruntal requested that the Claimant be denied relief in this proceeding. In addition Respondent Gruntal requested judgment against Leipold for Gruntal's cost of suit incurred herein and have such other and further relief as the arbitrators deem just and proper.

Respondent Mahan requested judgment against Leipold for her costs of suit incurred and such other relief as the arbitrators deem just and proper.

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

Insert if applicable: 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 original(s) remain on file with the NASD.

Respondent Mahan's Motion to Consolidate was granted on January 18, 1994 by 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. The Respondents Mahan and Gruntal are liable to the Claimant in the amount of **ONE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$175,000.00)**.
2. There is no award for interest and each party is to bear its own expenses including attorney fees, filing and forum fees, witness fees and expenses, etc.

### FORUM FEES

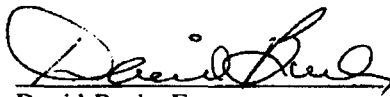
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Non-refundable Filing Fee:	\$ 250.00
Hearing Sessions (19 @ \$1,000 per session):	<u>\$19,000.00</u>
Total Fees:	\$19,250.00

1. The Claimant has paid \$1,250.00 and owes \$5,083.34 to the NASD.
2. Respondent Gruntal has paid \$1,000.00 owes \$5,333.33 to the NASD.
3. Respondent Mahan owes \$6,333.33 to the NASD.

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

### ARBITRATION PANEL



David Buch, Esq.  
Chairperson

Public

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Ezra Cornell

Industry

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David P. Polino

Public

Date of Decision: Janaury 23, 1996

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David P. Polino

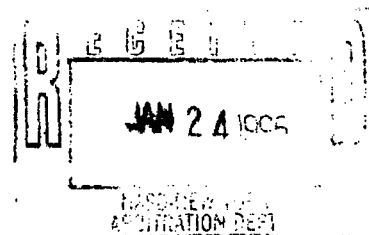
Public

Date of Decision: January 23, 1996

**AFFIRMATION**

I, David Buch, Esq. do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

  
David Buch, Esq.



**AFFIRMATION**

I, Ezra Cornell, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

  
\_\_\_\_\_  
Ezra Cornell



**AFFIRMATION**

I, **David P. Polino**, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules that this is my decision in the above captioned matter.

  
**David P. Polino**