

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Marcia B. Zimmerman

93-03060

Name of Respondents

Gruntal & Co., Inc.
Jonathan Lyons

REPRESENTATION

For Claimant Marcia B. Zimmerman ("Zimmerman") appeared Robert Chira, Esq., of Robert Chira & Associates located in New York City, New York.

For Respondent Gruntal & Co., Inc., ("Gruntal") appeared Harry D. Frisch, Esq., In-house counsel for Gruntal.

For Respondent Jonathan Lyons ("Lyons") appeared William D. Briendel, Esq., of Greenberg Traurig Hoffman Lipoff, et al, located in New York City, New York.

CASE INFORMATION

Statement of Claim filed on: August 4, 1993.

Claimant's Submission Agreement signed on: September 13, 1993.

Statement of Answer filed by Respondent Gruntal on: December 10, 1993.

Respondent Gruntal's Submission Agreement signed on: December 8, 1993.

Statement of Answer filed by Respondent Lyons on: October 12, 1994.

No Submission Agreement signed by Respondent Lyons.

HEARING INFORMATION

Pre-Hearing Conference:	October 13, 1994	-	1 session
	October 21, 1994	-	1 session
	November 30, 1994	-	1 session
	January 31, 1995	-	1 session
Hearing Date(s)/Sessions:	March 2, 1995	-	2 sessions
	March 3, 1995	-	2 sessions
	March 9, 1995	-	1 session

March 16, 1995	-	2 sessions
March 17, 1995	-	2 sessions
April 4, 1995	-	2 sessions
April 5, 1995	-	2 sessions
June 9, 1995	-	1 session
June 23, 1995	-	2 sessions
June 26, 1995	-	2 sessions
July 28, 1995	-	2 sessions
July 31, 1995	-	2 sessions
August 1, 1995	-	2 sessions
September 7, 1995	-	2 sessions
September 18, 1995	-	2 sessions
September 21, 1995	-	2 sessions
September 22, 1995	-	2 sessions
September 27, 1995	-	2 sessions
September 29, 1995	-	1 session

The hearings took place in the National Association of Securities Dealers, Inc.'s offices located in New York City, New York.

CASE SUMMARY

Claimant Zimmerman alleged that Respondent Lyons is a broker who was employed by Respondent Gruntal for approximately six months in 1992 and previously worked for the Lanyi Division of Ladenburg, Thalmann & Co., Inc., ("Ladenburg") where Lyons recommended a few stock investments for the claimant's husband, Dr. Zimmerman. Zimmerman further contended that although the investment account is in her name, Dr. Zimmerman actually handles all aspects of the accounts.

According to the Claimant in May 1992, Lyons contacted Dr. Zimmerman regarding purchasing stock called Candela Laser Corp. ("Candela"). Zimmerman alleged that Lyons informed her and her husband that he [Lyons] had important information about Candela which would cause the stock to "take off". Zimmerman maintained that Lyons indicated that a great profit could be made with the stock in four to six weeks. Additionally, the Claimant contended that when she informed Mr. Lyons that she and her husband did not want to take any significant risks, Mr. Lyons assured them that there were none.

The Claimant further stated that between May 20 and June 19, 1992 she and her husband invested \$175,345 in cash and, by margining their account, had acquired additional shares in Candela so that by June 20, 1992 they owned a total of 20,300 shares purchased at prices of \$13 to \$14 per share. In addition, the Claimant contended that between May 18 and July 29, 1992 no announcement of a new application or technology was made by Candela and that by July 8, 1992 the Candela stock fell to \$9 per share. By February 1993, according to Zimmerman, the Candela stock fell to about \$5 per share. Zimmerman stated that because margin calls were not met her entire investment was sold off so that by March 1993 they had incurred a total loss of about \$168,000.

Zimmerman also maintained that Lyons stated that the Candela purchase would be marked unsolicited for various reasons which Dr. Zimmerman should not worry about. In addition, according to the Claimant she was not informed that Lyons was marking the box 'speculation' as to the Zimmermans' investment objective on the New Account Form and that such an indication was contrary to the Zimmermans' specific statement to Lyons.

The Claimant alleged that Respondents Lyons and Gruntal violated various federal and state securities

laws, including Section 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, and New York's Martin Act. Zimmerman further alleged that the Respondents each breached their duty to know their customer and to recommend only suitable investments for them, which violated various rules of the NASD and stock exchanges including Rule 4154 of the NASD's Rules of Fair Practice. In addition, the Claimant contended that Lyons and Gruntal each breached their fiduciary duty to Claimants. The Claimant also alleged that Respondent Gruntal failed to adequately supervise Respondent Lyons and was therefore, liable under Section 20(a) of the Securities Exchange Act of 1934 and under common law principles of respondeat superior.

Respondent Gruntal alleged that the Claimant failed to state a claim upon which relief could be granted because the Claimant failed to provide factual support for its claims. In addition, Gruntal maintained that although the Zimmermans received confirmations and monthly account statements, they never once protested or complained to either Lyons, the branch manager, the regional manager, the Compliance Department, or the Legal Department that their trades were incorrectly marked. Moreover, Respondent Gruntal contended that since the Zimmermans did not amend the information on their New Account Form regarding their investment objective as being speculative, Candela was a suitable recommendation. Gruntal also incorporated by reference and adopted the Statement of Answer and Affirmative Defenses submitted by Respondent Lyons set forth below.

Respondent Lyons alleged that Dr. Zimmerman is a sophisticated investor who primarily purchased undiscovered growth stocks recommended by Lyons former employer, Ladenburg. Lyons also maintained that Dr. Zimmerman's new account form at Gruntal which reflected investment objectives of speculation, growth and capital appreciation was not complained about until some 16 months after the receiving a copy of the completed form. Lyons contended that prior to Dr. Zimmerman's purchase of Candela, Lyons discussed the various products and technologies Candela was developing with Dr. Zimmerman and advised Dr. Zimmerman that Candela was a growth stock which had potential for significant appreciation, but that there was a downside risk as well. According to Lyons, Dr. Zimmerman understood and accepted the risks involved in the purchases of Candela which were clearly suitable for his account in light of his investment objectives and financial wherewithal.

Respondent Lyons also raised the following affirmative defenses: failure to state a claim upon which relief may be granted; ratification; waiver; claimant made all of the investment decisions with regard to her account and any losses which may have been suffered by claimant were caused by such decisions and market conditions outside the control of Lyons; failure to mitigate damages, if any; estoppel; any and all damages sustained by Claimant was caused by the Claimant's own negligence and lack of due care; laches; and the Claimant expressly ordered, approved, participated in and authorized the transactions complained of and upon which recovery is sought.

RELIEF REQUESTED

Claimant requested:

1. An award determining that the Respondents Gruntal and Lyons are jointly and severally liable to the claimants;
2. Damages totaling approximately \$168,000.00 later amended to \$123,000.00, with interest from approximately May 1992 to the date of the award;
3. The costs of the arbitration, including filing fees and administrative expenses;
4. Reasonable attorney's fees incurred to bring and prosecute their claims;

5. Such other and further relief as the tribunal deems just and proper; and
6. That the arbitration panel refer this claim and its disposition to the appropriate regulatory authorities for enforcement action.

Respondent Gruntal requested that the Statement of Claim be dismissed in its entirety with costs and reasonable attorney's fees awarded to Gruntal.

Respondent Lyons requested that the instant claims be dismissed in all respect and that he be awarded attorney's fees, costs, and expenses incurred in the defense of the instant claims and such other and further relief as is deemed just and proper.

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 original(s) remain on file with the NASD.

AWARD

After considering the pleading, the testimony and the evidence presented at the hearing and post hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims are dismissed in their entirety.
2. No attorney's fees are awarded.
3. Forum fees are to be split equally among the three parties: Claimant, Marcia Zimmerman; Respondent Lyons; and Respondent Gruntal.

FORUM FEES

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

Non-refundable Filing Fee:	\$ 200.00
Hearing Sessions (35 @ \$750.00 per session):	\$26,250.00
Pre-hearing Sessions (4 @ \$300 per session):	\$ 1,200.00
Postponement Fee:	<u>\$ 750.00</u>

Total Fees: \$28,400.00

1. Claimant Zimmerman paid \$3,650.00 and owes \$5,816.66 to the NASD.
2. Respondent Gruntal paid \$3,650.00 and owes \$5,816.66 to the NASD.
3. Respondent Lyons has paid nothing and owes \$9,466.67 to the NASD.

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

I, Marilyn J. Salzman, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Concurring Arbitrator's Signature
Name

Public/Industry

Marilyn J. Salzman
Marilyn J. Salzman, Esq.

Date of Decision: _____

RECIPIENTS:

Marilyn J. Salzman, Esq.

NASD Date of Decision: November 6, 1995

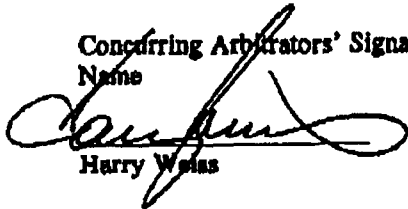
FROM : WEISS

PHONE NO. : 9142538314

Nov. 04 1995 11:16AM P02

I, HARRY WEISS, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Concurring Arbitrators' Signatures
Name


Harry Weiss

Public/~~Industry~~

Date of Decision: 11/4/95

RECIPIENTS:

Harry Weiss

NASD Date of Decision: November 6, 1995

I, JAMES R. MADAN, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Concurring Arbitrators' Signatures

Name


James R. Madan

Public Industry

Date of Decision: November 4, 1995

RECIPIENTS:

James R. Madan

NASD Date of Decision: November 6, 1995