

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimants

E.T. Hermann and  
Jane Hermann, Trustees  
For the Hermann Living Trust Account

vs.

NASD Arbitration  
#93-03216

Name of Respondents

Gruntal & Company, Inc.  
Scott Mathis

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REPRESENTATION

For Claimants: Janet Brayer, Esq., Vogl & Meredith,  
San Francisco, California

For Respondents: Eric S. Hutner, Esq., Gruntal & Co., Inc.,  
New York, New York

CASE INFORMATION

Statement of Claim filed: August 16, 1993

Claimants' Submission Agreement signed: September 28, 1993

Joint Statement of Answer filed: December 14, 1993

Respondents' Submission Agreements signed:  
Gruntal & Co.: December 7, 1993  
Scott Mathis: December 7, 1993

### HEARING INFORMATION

Pre-hearing telephone conference date/sessions: July 22, 1994 - 1 session

Hearing dates/sessions: July 27, 1994 - 2 sessions  
July 28, 1994 - 2 sessions

Hearing location: San Francisco, California

### CASE SUMMARY

Claimants alleged unauthorized trading in common shares of Quadrex Corporation, Cambridge Biotech Corporation, Charles Schwab, DFC Communications and Home Shopping Network. In addition Claimants alleged churning, failure to supervise and violations of the NASD Rules of Fair Practice.

Respondents denied the allegations, and asserted that all transactions were done after obtaining Claimants' prior approval. With respect to the allegations of churning, Respondents asserted that the account was a trading portfolio set up to move in and out of positions to take advantage of small price differentials. Respondents assert that Claimants were sophisticated, experienced traders who failed to complain prior to filing this claim and who also failed to mitigate damages.

### RELIEF REQUESTED

Claimants requested damages of \$114,949 (amended to \$93,211 at hearing) plus lost opportunity costs, punitive damages and attorney's fees.

Respondents requested dismissal of all claims, and an award of costs of arbitration, including 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.

### 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. All claims asserted by Claimants, including the claim for punitive damages, are dismissed in their entirety.
2. The parties shall each bear their respective costs, including attorney's fees.

### FORUM FEE

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the \$200 non-refundable filing fee. Claimants are assessed all forum fees as follows:

One pre-hearing telephone conference @ \$300/session	\$300.00
Four hearing sessions @ \$750/session	<u>3,000.00</u>
	3,300.00
Credit for hearing sessions deposit	<u>750.00</u>
Balance due	\$2,250.00
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Forum fees are payable to the NASD, Inc.

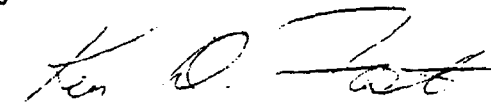
### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Robert L. Liu	Public
Jane B. Soden	Public
Ken D. Foster	Industry

Concurring Arbitrators Signatures

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Robert L. Liu

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Jane B. Soden

  
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Ken D. Foster

Date of Decision: 8-11-94

Date Served: 08/15/94