

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Albin T. and Madeline Cerajewski & Patricia Gilman

and

93-03412

Name of Respondent

Alexandra Kunkle

REPRESENTATION OF PARTIES

Albin T. and Madeline Cerajewski & Patricia Gilman (collectively as "**Claimants**") were represented by Marshall Patner, Esq., Marshall Patner & Associates, P.C., Chicago, Illinois.

Alexandra Kunkle ("**Respondent**") was represented by J. William Holland, Esq., Holland & Holland, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about August 31, 1993. Submission Agreement of Claimants Albin T. and Madeline Cerajewski was signed on August 25, 1993. Submission Agreement of Claimant Patricia Gilman was signed on September 21, 1993.

Statement of Answer was filed by Respondent Alexandra Kunkle on or about November 30, 1993. Submission Agreement of Respondent Alexandra Kunkle was signed on November 29, 1993.

HEARING INFORMATION

The hearing was held on Monday, June 26, 1995 for two (2) sessions, Wednesday, July 12, 1995 for two (2) sessions and Friday, July 14, 1995 for one (1) session in Chicago, Illinois for a total of five (5) sessions.

CASE SUMMARY

Claimants alleged that Respondent Kunkle engaged in unauthorized trading and recommendations and purchases of securities which were unsuitable for them in light of their investment needs and

objectives. In particular, Claimants stated that the investment in zero coupon Treasury strips were unsuitable for them. Claimants also alleged that Respondent Kunkle churned their accounts. Specifically, Claimants alleged that the actions of Respondent Kunkle constituted breach of contract, breach of fiduciary duty, securities fraud under the Securities Exchange Act of 1934, and common law fraud.

Respondent Kunkle denied the allegations set forth in the Statement of Claim. Specifically, Respondent Kunkle denied that the Claimants had informed her that the funds in the Claimants' account represented exclusively retirement funds. Respondent Kunkle further stated that the Claimants were informed of and authorized each transaction.

RELIEF REQUESTED

Claimants requested an award in the amount in excess of \$35,000 which represents the amount of loss incurred as a result of the purchase and sale of securities alleged, punitive damages in the amount of \$35,000, reasonable attorneys' fees, interest, fees and costs incurred in this proceeding and such other and further relief as the arbitration panel deems appropriate.

Respondent requested that the claims asserted against her be denied in their entirety and that she be awarded her costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Prior to the commencement of the hearing of this matter, Claimants reached a settlement with Gruntal & Co., Inc. Subsequent to being advised of the settlement between the Claimants and Gruntal & Co., Inc., Respondent Kunkle filed a Motion to Dismiss or in the Alternative for Leave to File a Third Party Claim against Gruntal & Co., Inc. After considering the written submissions of the parties, the Arbitration Panel denied the motion.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. Respondent Alexandra Kunkle shall be and hereby is liable for and shall pay to the Claimants Albin T. and Madeline Cerajewski & Patricia Gilman the sum of **Eighteen thousand six hundred eighty dollars and forty four cents (\$18,680.44)** as compensatory damages.

2. Respondent Alexandra Kunkle shall be and hereby is liable for and shall pay to the Claimants Albin T. and Madeline Cerajewski & Patricia Gilman the sum of **Eighteen thousand six hundred eighty dollars and forty four cents (\$18,680.44)** as punitive damages. In making this award of punitive damages, the undersigned arbitrators find that they have the authority to award punitive damages after considering the written submissions and arguments of the parties.
3. Each party shall bear its' own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were five (5) sessions x \$500 = \$2,500 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall **retain** the non-refundable filing fee in the amount of \$150 and shall **refund** the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimants Albin T. and Madeline Cerajewski & Patricia Gilman. Respondent Alexandra Kunkle shall be and hereby is liable for and shall pay to the NASD the sum of \$2,500 as forum fees.

The NASD shall retain postponement fees in the amount of \$500 previously deposited with the NASD Gruntal & Co., Inc. Gruntal & Co., Inc. shall pay to the NASD the sum of \$1,000 which is the balance of postponement fees due pursuant to §30 of the NASD Code of Arbitration Procedure. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/ Alan J. Fisher, Esq.

Alan J. Fisher, Esq.

Public Arbitrator, Presiding Chair

August 2, 1995

/s/ Daniel S. Hefter, Esq.

Daniel S. Hefter, Esq.

Public Arbitrator

August 10, 1995

/s/ Thomas J. Cavanagh

Thomas J. Cavanagh

Industry Arbitrator

August 2, 1995

NASD Disciplinary Referral

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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and

93-03412

Name of Respondent

Alexandra Kunkle

Report of Arbitrators

After considering the evidence and arguments presented by all parties, the undersigned arbitration panel believes that a disciplinary referral should be made against Respondent Gruntal & Co., Inc. for its apparent failure to supervise Respondent Alexandra Kunkle.

Dated:

/s/ Alan J. Fisher, Esq.

August 2, 1995

Alan J. Fisher, Esq.

Public Arbitrator, Presiding Chair

/s/ Daniel S. Hefter, Esq.

August 10, 1995

Daniel S. Hefter, Esq.

Public Arbitrator

/s/ Thomas J. Cavanagh

August 2, 1995

Thomas J. Cavanagh

Industry Arbitrator