

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Donald A. Brainard,
Claimant

93-04306

v.

Gruntal & Co., Inc.
Douglas Sherman,
Respondents

REPRESENTATION OF PARTIES

Mark W. Nichols, Esq., of Nichols, Wolff & Ledbetter, Little Rock, Arkansas, represented Claimant Donald A. Brainard ("Claimant").

Harry Frisch, Esq., Counsel for Gruntal & Co., Inc., represented Respondents, Gruntal & Co., Inc. and Douglas Sherman ("Respondents").

CASE INFORMATION

Claimant's Statement of Claim was filed on or about October 18, 1993..

Claimant's Submission Agreement signed on September 9, 1993..

Respondents' Joint Statement of Answer was filed on or about January 3, 1994.

Respondents' Submission Agreement was signed on August 2, 1994

HEARING INFORMATION

Hearing Date: August 2, 1994. Two (2) sessions

Hearing Location: Little Rock, Arkansas.

CASE SUMMARY

Claimant, Donald A. Brainard ("Claimant") alleges that Respondents, Gruntal & Co., Inc. and Douglas Sherman, (collectively "Defendants"): Violated Sections 22(a) and 22(c) of the Arkansas Securities Act; violated Section 23-46-106(a) of the Arkansas Code Annotated, and committed common law fraud. These allegations arise out of an unauthorized purchase of 4,500 shares of Deprinol Biotech which claimant repeatedly asked Respondents to adjust, but Respondents refused to do so causing Claimant to sell the 4,500 shares of Deprinol Biotech at a loss.

Respondents denied that the trade in Claimant's account was unauthorized and, even assuming, for the sake of argument that the trade was not initially authorized, Claimant's failure to object ratified the trade. In addition, Respondents asserted the affirmative defenses of ratification; Claimant is not entitled to special, exemplary or punitive damages or an award of attorney's fees as a matter of law, losses are due to market conditions; Claimant voluntarily assumed the risk of loss; Respondent, Gruntal maintained comprehensive system of supervision; Claimant failed to mitigate any loss; state a claim for punitive damages; cannot recover damages for violations of NASD rules, if any, as no

private right of action exists for such violations; and Claimant's account was invested in accordance with his investment objective.

RELIEF REQUESTED

Claimant requested an award against the Respondents of up to \$241,676.30 in actual losses, punitive and exemplary damages.

Respondent requested that the claim be dismissed and that they be awarded reasonable attorney fees and costs incurred in this matter.

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 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., Inc. and Douglas Sherman are, and each of them, jointly and severally liable for, and shall pay to the Claimant, Donald A. Brainard, the sum of \$18,000.00 plus interest at the rate of six (6) percent per annum from April 30, 1992 until paid.
2. Claimants claims for punitive damages, attorney's fees, and costs are hereby, and each of them, denied and dismissed with prejudice.

OTHER COSTS

Each party shall bear its own costs and expenses related to this arbitration, including attorneys' fees.

FORUM FEES

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

2 Regular hearing sessions @ \$750.00 per session = \$1,500.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable Claim filing fee in the amount of \$250.00, and shall retain the Claim hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$750.00 are assessed jointly and severally against the Respondents.

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

Concurring Arbitrators' Signatures

Dated:

Name:

August 15, 1994

P. Drake Mann/s/
P. Drake Mann, Esq.
Presiding Chair
Public Arbitrator

August 11, 1994

John L. Porter/s/
John L. Porter
Public Arbitrator

August 10, 1994

James N. Kennedy, Jr./s/
James N. Kennedy, Jr.
Industry Arbitrator

Date of Service by the NASD: 8-17-94