

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

David R. Barber

and

93-04759

Name of Respondents

**Gruntal & Co., Inc.,
John R. Eaton and
Evan Taber**

REPRESENTATION OF PARTIES

David R. Barber ("Claimant") was represented by William D. Nelson, Esq., Robinson, Waters, O'Dorisio & Rapson, Denver, Colorado.

Gruntal & Co., Inc. ("Gruntal"), John R. Eaton ("Eaton") and Evan Taber ("Taber")(collectively as "Respondents") were represented by Harry Frisch, Esq., Gruntal & Co., Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about November 17, 1993. Submission Agreement of Claimant David R. Barber was signed on October 15, 1993.

Statement of Answer was filed by Respondents Gruntal & Co., Inc., John R. Eaton and Evan Taber on or about January 27, 1994. Submission Agreement of Respondent Gruntal & Co., Inc. was signed on August 25, 1994 by Harry D. Frisch. Submission Agreement of Respondent Evan Taber was signed on August 25, 1994.

HEARING INFORMATION

The hearing was held on Thursday, August 25, 1994 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

It was alleged in the Statement of Claim that Respondent Taber violated §10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder, the Colorado Securities Act and common law. Claimant alleged that the above violations occurred when Respondent Taber engaged in unauthorized transactions in unsuitable securities, breached their duty of care and breached their fiduciary duty to the Claimant. Claimant specifically alleged that Respondent Evan Taber made unauthorized purchases of R & B Inc., and Riddell Sports, Inc. on margin and the unauthorized sale of American Adjustable Rate Term Trust, Inc.

Respondents denied the allegations set forth in the Statement of Claim. Specifically, Respondents stated that the purchase of Riddell Sports, Inc was made after full discussion with, and approval by, Claimant. With respect to the purchase of R & B, Inc., Respondents stated that the recommendation was discussed with the Claimant prior to the transaction, that the Claimant was advised that the transaction was to be fully margined and that the Claimant was to deposit cash into the account. Respondents also stated that the position in American Adjustable Rate Term Trust, Inc. was sold only after discussion with Mr. Barber and only after the Claimant's explicit approval. Respondents stated that the Claimant ratified every trade in his account by his failure to object after receipt of his confirmations and monthly statements. Respondents also asserted affirmative defenses including but not limited to the following:

- * ratification and acquiescence;
- * any losses sustained by the Claimant are attributable to market conditions and to his own investment decisions, not to any action or inaction on the part of Respondents;
- * the claims are barred by the doctrines of waiver, estoppel and ratification; and
- * failure to mitigate.

RELIEF REQUESTED

Claimant requested damages from Respondents, jointly and severally, in the amount of \$43,634.91, together with attorneys' fees and costs, interest and punitive damages as determined by the arbitration panel.

Respondents request that the panel issue an order dismissing the claims asserted in this matter in their entirety and assessing all costs associated with this proceeding against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Claimant by letter dated August 19, 1994 dismissed all claims asserted against Respondent John R. Eaton.

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 Evan Taber shall be and hereby are jointly and severally liable for and shall pay to the Claimant David R. Barber the sum of Seven thousand nine hundred twenty three dollars (\$7,923).
2. The requests for interest and punitive damages shall be and hereby are denied.
3. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.
4. All relief not specifically granted herein is denied.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$500 = \$1,000 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 retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD by the Claimant. Respondents Gruntal & Co., Inc. and Evan Taber shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of \$500 as the balance due for forum fees.

The NASD shall retain postponement fees in the amount of \$500 previously deposited with the NASD by Respondent Gruntal & Co., Inc. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

September 2, 1994

/s/ James B. Eichberg
James B. Eichberg
Public Arbitrator, Presiding Chair

September 2, 1994

/s/ John Fleming Kelly, Esq.
John Fleming Kelly, Esq.
Public Arbitrator

September 5, 1994

/s/ Forrest D. Smith
Forrest D. Smith
Industry Arbitrator