

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

In the Matter of the Arbitration Between

**Name of Claimant(s)**

Theresa A. Smith

NASD Arbitration  
No. 93-5227

**Name of Respondent(s)**

Gruntal & Co., Incorporated and Gregory LeSavoy

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**REPRESENTATION**

For Claimant: Stewart H. Foreman, Esq., Griffinger, Freed, Heinemann, Cook & Foreman, San Francisco, CA

For Respondent: Donald N. Cohen, Esq., Assistant General Counsel, Gruntal & Co., New York, NY

**CASE INFORMATION**

Statement of Claim filed: December 15, 1993

Claimant's Submission Agreement signed: December 7, 1993

Statement of Answer filed by Respondent: March 2, 1994

Respondent Gruntal & Co., Incorporated's Submission Agreement signed: March 2, 1994

Respondent Gregory LeSavoy's Submission Agreement signed: None submitted

## **HEARING INFORMATION**

**Pre-Hearing Conference:** November 28, 1994

**Hearing Date(s)/Sessions:** December 6 and 7, 1994, January 5, 1995 (7 sessions)

**Hearing Location:** NASD, 525 Market Street, San Francisco, CA

## **CASE SUMMARY**

**Claimant alleged:**

Claimant's husband died in January 1992. At that time, she had a three-year-old daughter and was expecting a second child who was born in June 1992. She had no significant assets other than life insurance proceeds of approximately \$220,000 from her deceased husband's policy and from the employee benefit plans of her husband's employer. Claimant had no previous experience in investing in securities.

Claimant met respondent LeSavoy, an agent, employee, and representative of respondent Gruntal & Co., Incorporated, after the death of her husband. Based on misrepresentations by respondent LeSavoy, claimant invested a total of \$185,804 in an account at respondent Gruntal & Co., Incorporated in San Francisco, with respondent LeSavoy as account executive.

The investments made by respondent LeSavoy on claimant's behalf were unsuitable for her needs and circumstances. In addition, respondent LeSavoy reported transactions made on behalf of claimant as "unsolicited" when LeSavoy had recommended the security to claimant. Respondent LeSavoy earned commissions far in excess of what was reasonable for the size and nature of claimant's account. Respondent Gruntal & Co., Incorporated failed adequately to supervise and control LeSavoy regarding the purchases, sales, management, and activity in claimant's account.

**Respondents alleged:**

Claimant emphasized to respondent LeSavoy that maximizing investment return was her primary concern. LeSavoy accepted claimant's account, but advised her that his recommendations would require holding the positions in order

to realize returns. Claimant assured respondent LeSavoy that she had sufficient funds outside of her Gruntal account to last her at least one year and that she would not need to withdraw money from her account during that period. LeSavoy discussed at length with claimant each and every transaction in her account, and followed claimant's instructions to focus on investment return. Claimant agreed with LeSavoy's recommendations and authorized each and every transaction entered. Claimant's portfolio was established by early June 1992.

Claimant telephoned respondent LeSavoy at least once a week and visited the office several times a month to discuss changes in her portfolio. Claimant was adamant that she was willing to accept the risk of highly speculative stocks given the opportunity to make money. Approximately two months after her portfolio was purchased, claimant told LeSavoy that she wanted more aggressive trading in her account. The securities purchased on claimant's behalf during the next three months consisted of aggressive growth stocks, and claimant discussed each purchase with respondent LeSavoy.

Apparently unhappy with the returns on her investments, claimant transferred her account without prior discussion with or notice to respondent LeSavoy. At that time, she had realized profits in all but two of her positions. One of the two positions was sold against the advice of respondent LeSavoy and today has increased in value over forty percent.

### **RELIEF REQUESTED**

Claimant requested actual damages in the amount of \$51,107.50, damages for the loss of the amount of income and growth she allegedly should have earned on the funds entrusted to respondents, interest, punitive damages, attorneys' fees, and costs of litigation.

Respondents requested dismissal of claimant's claims, attorney's fees, and costs of litigation.

### **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 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:

Judgment for claimant as follows: Compensatory damages in the amount of \$54,472.15; reimbursement of commissions in the amount of \$11,770.57; costs of litigation in the amount of \$6,500.00.

Each party shall bear its own attorney's fees.

### **FORUM FEES**

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed:

The NASD shall refund to claimant the \$500.00 hearing session deposit previously deposited by claimant. All forum fees are assessed against respondents jointly and severally and are calculated as follows: One (1) pre-hearing conference @ \$300.00 and seven (7) hearing sessions @ \$500.00/session for a balance due of \$3,800.00.

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

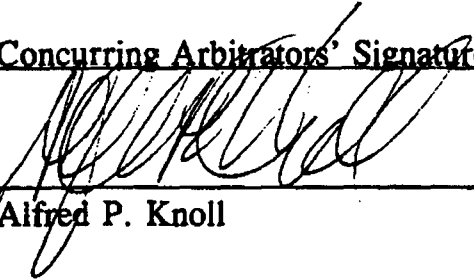
## **ARBITRATORS**

**Name** \_\_\_\_\_ **Public/Industry**

Alfred P. Knoll  
Donald S. Green  
Bryan F. Morse

Public Arbitrator  
Public Arbitrator  
Industry Arbitrator

**Concurring Arbitrators' Signatures**

  
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Alfred P. Knoll

\_\_\_\_\_  
Donald S. Green

\_\_\_\_\_  
Bryan F. Morse

Date of Decision: \_\_\_\_\_

1/23/95

Date Served: 01/24/95

## **ARBITRATORS**

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Public Arbitrator

Donald S. Green

Public Arbitrator

Bryan F. Morse

Industry Arbitrator

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**Date of Decision:** \_\_\_\_\_

**Date Served:** 01/24/95

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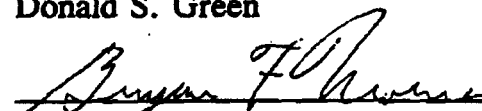
Bryan F. Morse

Industry Arbitrator

### Concurring Arbitrators' Signatures

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Alfred P. Knoll

\_\_\_\_\_  
Donald S. Green

  
\_\_\_\_\_  
Bryan F. Morse

Date of Decision: 1/5/95

Date Served: 01/24/95