

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Donald R. Berger  
Linda W. Berger

94-00141

Name of Respondents

Gruntal & Co., Inc.  
David Nichols

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REPRESENTATION

For Claimants Donald R. Berger and Linda W. Berger ("Claimants"):  
Allen M. Mandelbaum, Esq., of Norristown, PA.

For Respondent David Nichols ("Nichols"): Evan L. Gordon, Esq. of  
New York, NY.

For Respondent Gruntal & Co., Inc. ("Gruntal"): Eric S. Hutner,  
Esq., of Gruntal & Co., Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed: January 12, 1994.  
Claimants' Submission Agreements signed on: December 20, 1993.

Statement of Answer filed by Nichols on: May 2, 1994.  
Nichols' Submission Agreement signed on: April 29, 1994.

Statement of Answer filed by Gruntal on: May 9, 1994.  
Gruntal's Submission Agreement signed on: May 6, 1994.

HEARING INFORMATION

Pre-Hearing Conference: March 9, 1995/one session.

Hearing Dates/Sessions: October 17, 1995/two sessions, October 18,  
1995/two sessions.

Hearing Location: National Association of Securities Dealers  
("NASD") District Office, Philadelphia, PA.

### CASE SUMMARY

Claimants alleged, among other things, that on or about November 30, 1992, Nichols engaged in the practice of churning in the purchase and selling of Centocor Bonds. Claimants alleged that Nichols breached his fiduciary duty by discouraging Claimants from selling Cambridge Biotech stock as it continued to fall in price. Claimants alleged that Nichols failed to provide any description sheet or written information on Cambridge Biotech and represented that it was fundamentally sound stock. Claimants alleged that Nichols sold 1,000 shares of Medical Marketing without authorization. Claimants alleged that Nichols was negligent and did not use reasonable care in managing their account. Claimants alleged that the actions of Respondents damaged them financially.

Nichols categorically denied the allegations wrong-doing. Nichols denied allegations of churning as Claimants' transactions were held for reasonable periods of time and the stocks were not sold after a short holding period for the purpose of buying other stocks. Nichols maintained that he recommended that Claimants sell the Centocor Bonds after they remained basically flat for a period of time and Claimants concurred with the recommendation. Nichols maintained that the losses Claimants suffered in the Cambridge Bioscience were not due to his breach of fiduciary as he did not handle those transactions. Nichols maintained that when he recommended that Claimants sell 1,000 shares of Medical Marketing two days in a row, Claimants concurred with both recommendations and the transactions were authorized by Claimants. Nichols also maintained that Claimants received confirmations of both transactions and never complained or indicated that the sales were not authorized.

Gruntal categorically denied the allegations of wrong-doing. Gruntal maintained that Claimants exercised control over Claimants' account at all times. Gruntal maintained that Claimants authorized all transactions and there were no unauthorized sales or purchases. Gruntal maintained that the Claimants have failed to state any facts to support claims of misrepresentation and abandonment.

### RELIEF REQUESTED

Claimants requested in their Statement of Claim actual damages in the amount of \$88,788.03 and seven and one-quarter percent (7.25%) prejudgment interest for a total of \$95,226.12.

Nichols requested in his Answer that the Statement of Claim be denied.

Gruntal requested in their Answer that the Statement of Claim be denied and Gruntal be awarded their costs and disbursements as well as 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.

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. The Statement of Claim filed by Claimants is denied.
2. That the parties shall bear their own costs, including attorney's fees except as specifically addressed herein.
3. That any and all relief not specifically addressed is denied in its entirety.

FORUM FEES

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

5 sessions X \$500 = \$2,500 minus hearing session deposit of \$500 = net \$2,000 due.

Forum fees Assessed Against: Claimants are assessed forum fees in the amount of \$2,000.00. Fees are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

11/8/95

Joseph R. Lally  
Joseph R. Lally, Presiding  
Public Arbitrator

Harold A. Stein  
Harold A. Stein  
Public Arbitrator

Gordon E. Wright  
Gordon E. Wright  
Industry Arbitrator

Date Award Served By the NASD: December 8, 1995

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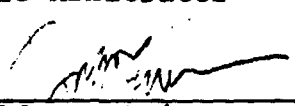
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