

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mark Skiba

94-00176

Name of Respondents

Gruntal & Co., Inc.
Peter Bizinkauskas

CASE SUMMARY

In claim filed with the National Association of Securities Dealers, Inc. on January 17, 1994, Claimant Mark Skiba, who appeared Pro Se, alleged that Respondent Peter Bizinkauskas, through the Respondent firm Gruntal & Co., Inc., gave unsuitable investment advice when he recommended him to purchase THQ, Inc. stock, which was not in accordance with his investment objective. The Claimant further alleged that the Respondents failed to provide him with a prospectus, and also that a margin account was opened without his authorization. Claimant Mark Skiba contended that pertinent information regarding this investment was withheld from him, and further that the Respondents fabricated positive information regarding the stock in order to placate him. The Claimant further contended that he has suffered damages due to the wrongdoing of the Respondents, and therefore the Respondents should be held liable in this matter.

Respondents Gruntal & Co., Inc. and Peter Bizinkauskas, through in-house counsel, Kimberly Unger, Esq., New York, NY, maintained that the \$6,000.00 investment was suitable for the Claimant given his expressed desire for investment in growth stocks and his stated ability to assume some risk and the financial information and experience he relayed to Respondent Peter Bizinkauskas. The Respondents further maintained that the Claimant did not request a prospectus, but that even if one was unavailable, there was no obligation by Respondents to provide one, since the stock was being sold in the secondary market. The Respondents contended that the security in question was initially purchased in the margin account pending receipt of payment, and that the Claimant was in no way injured through the temporary use of margin in his account. Respondents further contended that at no time was the performance of THQ guaranteed, and that they should not be held liable in this matter.

RELIEF REQUESTED

Claimant Mark Skiba requested \$6,002.50 in actual damages, plus interest and costs.

Respondents Gruntal & Co., Inc. and Peter Bizinkauskas requested that the claims of the Claimant be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

The motion filed by Respondent Gruntal & Co., Inc. to exclude recordings of telephone conversations is hereby granted. The motion filed by Claimant to exclude the November 30, 1992 letter included as Respondents' exhibit G in their Statement of Answer is hereby denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Arthur Medow, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on January 12, 1994, by Respondent Gruntal & Co., Inc. on April 15, 1994 and by Respondent Peter Bizinkauskas on April 18, 1994.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents Gruntal & Co., Inc. and Peter Bizinkauskas are jointly and severally liable and shall pay to Claimant Mark Skiba \$2,000.00 in actual damages.
2. Respondents Gruntal & Co., Inc. and Peter Bizinkauskas are jointly and severally liable and shall deliver 1,000 shares of THQ, Inc. stock, which are held in Claimant Mark Skiba's account, to the Claimant, providing these shares are presently held with Respondent Gruntal & Co., Inc.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Gruntal & Co., Inc. and Peter Bizinkauskas are jointly and severally liable and shall pay to the Claimant \$150.00 as reimbursement of the filing fee.

AFFIRMATION

I, ARTHUR MEDOW, ESQ., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: July 12, 1994