

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of Arbitration Between

Name of Claimant

Jacqueline A. Tosi as Executor of the
Estate of Byron G. Tosi

94-00179

Name of Respondents

Gruntal & Co., Inc.
Milton E. Stanson
Peter M. Vita

REPRESENTATION

For Claimant Byron G. Tosi ("Claimant") appeared Kevin A. Brousell, Esq., a sole practitioner located in New York, New York.

For Respondent Gruntal & Co., Inc., ("Gruntal") appeared John J. O'Donnell, Esq. of the law firm of Morgan, Lewis & Bockius located in New York, New York.

For Respondent Milton Erza Stanson ("Stanson") and Respondent Peter Vita ("Vita") appeared Brian Barrett, Esq., a sole practitioner located in New York, New York.

CASE INFORMATION

Statement of Claim filed: January 12, 1994.

Byron Tosi's Submission Agreement signed on: January 11, 1994.

Jacqueline Tosi's Submission Agreement signed in her capacity as the Executor of the Estate of Byron G. Tosi on: October 30, 1995.

Testamentary Certificate certifying that Jacqueline A. Tosi is duly authorized to administer the Estate of Byron G. Tosi dated: October 30, 1995.

Respondent Gruntal's Statement of Answer filed on: April 20, 1994.

Respondent Gruntal's Submission Agreement signed on: June 8, 1994.

Joint Statement of Answer filed by Stanson and Vita on: December 16, 1994.

Respondent Stanson's Submission Agreement signed on: January 6, 1995.

Respondent Vita's Submission Agreement signed on: June 6, 1995.

HEARING INFORMATION

Pre-hearing conferences:	March 17, 1995	-	One Arbitrator
Hearing dates/sessions:	June 6, 1995	-	Two Sessions
	June 7, 1995	-	Two Sessions
	June 8, 1995	-	Two Sessions
	August 10, 1995	-	Two Sessions
	August 11, 1995	-	Two Sessions
	September 29, 1995	-	Two Sessions
	October 5, 1995	-	Two Sessions
	October 6, 1995	-	Two Sessions
	October 12, 1995	-	One Session
	November 28, 1995	-	Two Sessions
	December 22, 1995	-	Two Sessions
	January 19, 1996	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that he was 79 years old at the time his account with Gruntal was opened. Claimant further alleged that he had no investment experience and that he maintained an inactive account in which he periodically purchased and rarely sold Seagrams & Co. ("Seagrams") stock. Claimant also alleged that he maintained this account to provide income for his retirement and as an inheritance for his children.

Claimant alleged that he was introduced to Stanson in late 1988 and that he had no interest in establishing a new brokerage account. Claimant further alleged that Respondent Stanson pursued him until he agreed to a meeting and that, at the meeting, Stanson allegedly told him that he was a Vice President of Gruntal and represented to Claimant that he could double Claimant's money within one year. It was also alleged that, at a second meeting, Claimant was introduced to Vita, who Stanson said was also a Vice President of Gruntal and that Stanson asked Claimant to transfer his account.

Claimant asserted that he transferred his account after receiving express assurances from Stanson and Vita that the account would be handled with the understanding that it represented his life savings and that he had no other source of income. Claimant further asserted that he instructed that 800 shares of Seagrams be put into a separate account for his children, that seventy-five percent of the stock remain intact so he could earn dividend income to live from and that the remaining shares be managed as a retirement account.

Claimant alleged that, after the transfer, Stanson and Vita began short selling the Seagrams stock, but that on his monthly account statements it appeared that his stock remained intact. Claimant contended that the manner in which Stanson and Vita traded his account was unsuitable for a retiree and constituted churning and manipulation. Claimant further contended that the cost of securities purchased for his account over a two year period was \$4,630,000.00 and that the account had a turnover ratio of 8.26. Respondents allegedly received in excess of \$82,500.00 in commissions and over \$90,000.00 in margin interest.

Claimant alleged that Stanson and Vita failed to apprise him of the effect and risks of the trading and refused to follow his instructions. Claimant alleged that he instructed Stanson and Vita to sell 17,000 shares of Unitronix, but that they failed to follow his instructions because they were making a market in the stock and they did not want such a large sell order to affect the price of the stock.

Claimant alleged that the conduct of the Respondents constituted negligence, a breach of contract and fiduciary duty, a violation of the NASD and NYSE rules, common law and securities fraud and a failure to supervise on the part of Gruntal's supervisors and management. Claimant further alleged that, after he complained to Respondents, he executed a release under duress and that the release was unenforceable because it was predicated on fraud and misrepresentation, there was inadequate consideration, there was no meeting of the minds between the parties, he was without the aid of legal counsel and he lacked the mental capacity to comprehend the effect of the release.

Gruntal denied all allegations of wrongdoing as asserted by Claimant. Gruntal maintained that Claimant was in fact an experienced investor and educated and sophisticated businessman. Gruntal further maintained that Claimant owned over 11,000 shares of Seagrams stock and that one of his primary investment objectives was to defer the tax liability on his stock while also protecting his large capital gain on the stock. Gruntal also maintained that in order to meet Claimant's investment objective, Stanson and Vita recommended that claimant gradually sell his shares short against the box, which is a well recognized hedge strategy for deferring tax liability.

Gruntal maintained that claimant did not immediately agree to sell all of his shares in this manner, but agreed to follow this strategy with 500 shares, but after several months Claimant decided to follow the strategy with respect to the remaining shares after he consulted with his accountant. Gruntal further maintained that it normally does not pay interest on short account credit balances, but that it did pay Claimant interest on his Seagrams short balances, at Claimant's specific request. Gruntal alleged that Claimant earned approximately \$90,000 in interest on his short account balances.

Gruntal maintained that Stanson and Vita recommended Unitronix stock to Claimant and that Claimant had researched the stock for four months and was in contact with a company representative during the entire time he was purchasing the stock. Gruntal also maintained that Claimant failed to take the advice of Stanson and Vita to "scale back" his holdings in Unitronix and that Claimant continued to purchase shares. Gruntal contended that, in March 1991, Claimant complained that Stanson had failed to follow his instructions in March 1990 to sell all of his Unitronix stock but that Claimant had given no such instruction.

Gruntal maintained that claimant demanded a rebate of his margin interest and to accommodate him, Gruntal agreed to credit his account with \$17,400 in interest charges and in exchange Claimant executed a General Release, which released Gruntal and its employees from all causes of action. Respondent denied that Claimant was under duress when he signed the release and maintained that Claimant knew exactly what he was doing.

As affirmative defenses, Gruntal maintained that the claim failed to state a claim against Gruntal for which relief can be granted; the claims were barred by the doctrine of release and discharge; the claims are barred by the statute of limitations and the doctrine of laches; the claims are barred by the doctrines of ratification and estoppel; and that New York law bars recovery of punitive damages.

Stanson and Vita denied that allegations of wrongdoing asserted against them and each adopted the Statement of Answer submitted on behalf of Gruntal.

RELIEF REQUESTED

Claimant requested consequential damages of at least \$500,000.00, attorney's fees and the costs of this proceeding. In addition, Claimant requested that the panel award punitive damages in an amount the arbitrators deem appropriate under the circumstances because respondents wrongful conduct was so gross and reprehensible and they should be punished for their actions.

Respondents requested that the claims be dismissed in their entirety and that the panel award them their costs and expenses in defending this proceeding.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing on October 12, 1995, the NASD and the arbitrators were advised that Claimant had died on October 10, 1995 and that his executor would be substituted as the claimant in this matter.

By letter dated, November 7, 1995, Claimant made a motion to amend the Statement of Claim. The arbitrators considered this motion and ruled that it be denied.

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 originals 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. Respondent Gruntal be and hereby is liable and shall pay to the Claimant the sum of \$125,000, inclusive of interest.
2. Respondent Vita be and hereby is liable and shall pay to the Claimant the sum of \$1,000, inclusive of interest.
3. Respondent Stanson be and hereby is liable and shall pay to the Claimant the sum of \$1,000, inclusive of interest.
4. Claimant's request for punitive damages is hereby denied.
5. Claimant's request for attorney's fees is hereby denied.
6. Each party shall bear their respective costs.
7. All other claims be and are hereby denied.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$200.00 filing fee \$750.00 hearing session deposit previously submitted by Claimant and have assessed the following forum fees:

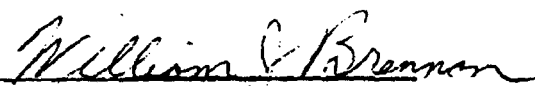
1 pre-hearing session (single arbitrator)	= \$ 300.00
23 hearing sessions x \$750.00	= <u>\$17,250.00</u>
Total forum fees outstanding	= \$17,550.00

Respondent Gruntal be and hereby is liable and shall pay to the NASD the sum of \$17,550.00, representing the total amount of forum fees outstanding.

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

ARBITRATORS' SIGNATURES

James Dolan, Esq.
Chairperson-Public Arbitrator


William J. Brennan
Public Arbitrator

Fred Shinagel
Industry Arbitrator

Date of decision: March 8, 1996

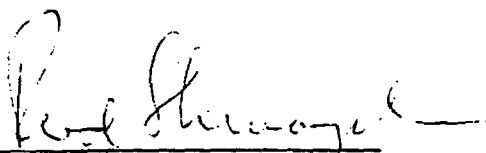
I, William J. Brennan, do hereby affirm that this is my decision in the above-referenced matter.


William J. Brennan

ARBITRATORS' SIGNATURES

James Dolan, Esq.
Chairperson-Public Arbitrator


William J. Brennan
Public Arbitrator



Fred Shinagel
Industry Arbitrator


Date of decision: March 8, 1996

I, **Fred Shinagel**, do hereby affirm that this is my decision in the above-referenced matter.



Fred Shinagel

ARBITRATORS' SIGNATURES

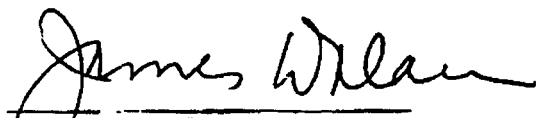

James Dolan, Esq.
Chairperson-Public Arbitrator


William J. Brennan
Public Arbitrator

Fred Shinagel
Industry Arbitrator

Date of Decision: March 8, 1996

I, James Dolan, Esq., do hereby affirm that this is my decision in the above-referenced matter.


James Dolan, Esq.


ELSA C. SHEA
NOTARY PUBLIC, State of New York
No. 4874348
Qualified in Nassau County
Commission Expires Dec. 15, 1996