

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Joseph Bonarigo

and

94-01527

Gruntal & Company, Incorporated
and David Geschke

REPRESENTATION OF PARTIES

Claimant, Joseph Bonarigo appeared pro se.

Respondents, Gruntal & Company, Incorporated and David Geschke were represented by Harry D. Frisch, Esq. of Gruntal & Company, Incorporated located in New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about April 25, 1994.

Submission Agreement of Claimant, Joseph Bonarigo was signed on April 18, 1994.

The Joint Statement of Answer was filed by the Respondents, Gruntal & Company, Incorporated and David Geschke on or about July 21, 1994.

The Submission Agreement of Respondent, Gruntal & Company, Incorporated was signed on July 21, 1994 by Michael Girona, Chief Financial Officer.

The Submission Agreement of Respondent, David Geschke was signed on May 4, 1995.

HEARING INFORMATION

The hearing was held on May 4, 1995 in Chicago, Illinois for a total of two (2) sessions.

CASE SUMMARY

Claimant, Joseph Bonarigo ("Bonarigo") alleged that between February, 1990 and January, 1992 he lost in excess of \$37,000.00 in stock trading and paid \$18,000.00 in commissions to Gruntal & Company, Incorporated ("Gruntal") which resulted in a total loss of \$55,000.00. Of those losses, trades in Alliant Computer, National Semiconductor and Commodore International allegedly accounted for almost \$29,000.00 and a purchase and sale of 5,000 shares of Pan Am accounted for almost \$11,500.00. Bonarigo asserted that Respondent, David Geschke ("Geschke") failed to follow the Claimant's instructions on April 25, 1991 which were to place a stop loss order on the Commodore trade to limit his downside exposure to \$1.00 per share or a total of \$2,000.00. The Claimant contended that he lost \$12,750.00 due to Geschke's failure to follow his instructions. The Claimant further asserted that Geschke apologized to him for not being able to place the stop loss order and that Geschke told him he would make up for this action by reducing his commissions on future trades. Bonarigo alleged that the only reason for the trading in the account was to generate huge commissions.

Respondents, Gruntal & Company, Incorporated and David Geschke denied all the allegations contained in the Statement of Claim. The Respondents claimed that Bonarigo, when instructing Geschke to purchase 2,000 shares of Commodore stock on or about April 25, 1991, did not ask Geschke to place a stop loss order nor did the Claimant complain about the transaction until January, 1992. The Respondents asserted the following affirmative defenses:

1. The Claimant ratified and acquiesced in each and every trade in which he now responds.
2. The Claimant is not entitled to any measure of damages other than out-of-pocket losses and specifically is not entitled to special, exemplary or punitive damages and any award of punitive damages would violate the due process clause.
3. That any losses sustained by Claimant are attributable to market conditions and to his own investment decisions, not to any action or inaction on the part of the Respondents.
4. That Claimant's losses, if any, were approximately caused by Claimant's expressed and applied agreement to voluntarily assume the risk of the known peril of any losses sustained by his account.
5. That the Claim is barred by the doctrines of waiver, estoppel and ratification.
6. That Gruntal maintained a comprehensive system of supervision, properly implemented based upon the information available to Gruntal as reflected on new account documents and trading records.

7. That Claimant has failed to mitigate damages.
8. That Claimant cannot recover damages for alleged violations of NASD rules, if any, as no private right of action exists for such violations.
9. That Claimant's account was invested in accordance with his investment objectives.

RELIEF REQUESTED

Claimant, Joseph Bonarigo requested an award in the amount of \$55,000.00 in actual damages plus costs of arbitration.

Respondents, Gruntal & Company, Incorporated and David Geschke requested that the Statement of Claim be denied in its entirety and that they be awarded costs of arbitration.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. 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 arbitrator have decided in full and final resolution of the issues submitted for determination as follows:

1. The Respondents, Gruntal & Company, Incorporated and David Geschke are hereby liable for and shall pay to the Claimant, Joseph Bonarigo the sum of \$2,500.00 in actual damages;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except those specifically enumerated herein; and
3. Any relief not specifically enumerated is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$500.00 per hearing session. There were two (2) sessions x \$500.00 = \$1,000.00 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 \$150.00 and shall retain as forum fees the hearing session deposit in the amount of \$500.00 previously deposited with the NASD by the Claimant. Respondents, Gruntal & Company, Incorporated and David Geschke are liable for and shall pay to the Claimant, Joseph Bonarigo the amount of \$650.00 as reimbursement. The Respondents, Gruntal & Company, Incorporated and David Geschke are liable for and shall pay to the NASD the sum of \$500.00 for the balance of the forum fees. Respondent, Gruntal & Company, Inc. is liable for and shall pay to the NASD the amount of \$200.00 for the surcharge assessed in accordance with Section 45 of the Code.

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

Arbitrators Signatures

Robert P. Scales, Esq.

Robert P. Scales, Esq.
Public Arbitrator, Presiding Chair

Kenneth H. Hanson, Esq.

Kenneth H. Hanson, Esq.
Public Arbitrator, Panelist

Frank R. Niederman

Frank R. Niederman
Industry Arbitrator, Panelist

Date served by the NASD: June 22, 1995