

AWARD

NASD REGULATION, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Sargis Khoobiar

vs.

Case No.  
94-02106

Name of Respondents

Gruntal & Co., Inc.  
Michael Herman

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**REPRESENTATION**

For Claimant, Sargis Khoobiar ("Claimant"), Morton Minsley, Esq., located in New York, New York.

For Respondent, Gruntal & Co., Inc. ("Gruntal"), Harry Frisch, Esq. in-house counsel at Gruntal located in New York, New York.

For Respondent, Michael Herman, ("Herman"), Deborah A. Skakel, Esq. from the firm of Baer, Marks & Upham, located in New York, New York.

**CASE INFORMATION**

Statement of Claim was filed on June 3, 1994.

Claimant's Submission Agreement was signed on April 20, 1994.

Statement of Answer was filed by Respondent Gruntal on November 17, 1994.

Respondent Gruntal's Submission Agreement was signed on July 18, 1994.

Statement of Answer was filed by Respondent Herman on January 30, 1995.

Respondent Herman's Submission Agreement was signed on November 13, 1994.

**HEARING INFORMATION**

Hearing Dates/Sessions:	August 15, 1996	-	2 sessions
	August 16, 1996	-	2 sessions
	November 4, 1996	-	2 sessions
	December 20, 1996	-	2 sessions
	December 27, 1996	-	2 sessions

Hearing Location: NASD Regulation, Inc. offices located at 33 Whitehall Street, New York, New York and Club Quarters located at 52 William Street, New York, New York.

### CASE SUMMARY

Claimant states that at the time of this filing, he was a 64 year-old consultant in research and development in petrochemical and petroleum research who had a wife and two children to support. Claimant also states that he maintained a brokerage account at Gruntal from approximately August 10, 1993 through November 23, 1993 and lost approximately 46% of his moneys invested with Gruntal. Claimant alleges that he opened his account after receiving a cold call from Herman who stated that Gruntal had an excellent research department, especially in the field of semiconductors. Claimant also alleges that Herman indicated that the investments selected through Gruntal would be low risk and profitable. Claimant further alleges that he purchased over-the-counter stocks through Herman and that his prior investment experience was primarily with municipal bonds and non-speculative, lower-risk-securities. Claimant states that Herman knew that Claimant was unsophisticated and that his investment objective was for long-term growth and preservation of capital.

Claimant contends that Gruntal and Herman, collectively Respondents, in disregard of their fiduciary duty to Claimant fraudulently, negligently and with wanton indifference to Claimant's interests, engaged in high pressure sales tactics, churned Claimant's account with the purchase of highly speculative securities, misstated material facts which they knew or should have known were false and failed to adequately disclose conflicts of interest arising from Gruntal's position as a market maker in the securities recommended. Claimant states that some of the securities in question were LTX Corp., Quad Systems Corp. and VLSI Technology, Inc., which all traded on OTC. Claimant also states that Herman represented that these stocks would double or triple in value by the end of the year.

Claimant also alleges that Respondent made unauthorized trades in his account of \$100,000 shares of Enzon stock. Claimant contends that Respondents' actions were in violation of the anti-fraud provisions of the 1933 and 1934 Acts, SEC Rule 10b-5, common law fraud, applicable Blue Sky Laws and the regulations promulgated thereunder. Claimant also contends that Respondents were negligent, breached their contract and their fiduciary duty to Claimant. Claimant further contends that Gruntal is liable for Herman's acts and omissions under the "controlling person" provisions of the 1933 and 1934 Securities Acts, the applicable Blue Sky Laws, and the principle of respondeat superior and for failing to supervise the handling of Claimant's account.

Respondent Gruntal denies the allegations of wrongdoing, denies liability and asserts eleven affirmative defenses. Gruntal states that Claimant was the President of Scientific Research and Development which was involved in chemicals. Gruntal also states that Claimant indicated that he had an approximate net worth of \$1 million, annual income of \$200,000 and that his investment objectives were growth and speculation. Gruntal also stated that Claimant executed Gruntal's Client Agreement which contained a provision for margin transactions. Gruntal contends that while Gruntal maintained two other accounts for Claimant's family, a custodial account for Claimant's daughter and an individual account for his wife which contained conservative investments, Claimant did not include these accounts in his claim. Gruntal contends that Claimant's claims are meritless, that the trading in Claimant's accounts were consistent with his investment objectives and that Claimant ratified all investments.

Respondent Herman denies all allegations of wrongdoing, denies liability, asserts three defenses and joins in the arguments and defenses asserted by Gruntal.

Respondent Herman contends that while he obtained Claimant's name from a Dun & Bradstreet lead card which indicated that Claimant was a qualified investor, he still inquired of Claimant to insure that Claimant was a qualified investor. Herman also contends that Claimant indicated that he had lost a

substantial amount of money while his account was maintained at another NASD firm and he wanted to recoup his losses now that his account was with Gruntal.

### **RELIEF REQUESTED**

Claimant requests an award of \$94,000.00 in compensatory damages, opportunity costs, interest, costs and attorney's fees, plus treble punitive damages.

Respondents request that the Statement of Claim be dismissed in its entirety and that any and all costs be assessed against Claimant. Respondent Herman also requested such other and further relief as is just and proper.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed to receive counterpart copy of the Award while the original remains on file with NASD Regulation, Inc.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Gruntal & Co., Inc. and Michael Herman, are jointly and severally liable to Claimant in a total amount of Thirty Seven Thousand and Fifty Four Dollars and Ninety Cents (\$37,054.90). This amount includes \$29,005.79 in compensatory damages and \$8,049.11 in interest from November 3, 1993 to the last hearing date.
2. The claim for punitive damages is denied.
3. All parties' claims for attorney's fees are denied.
4. All other claims for relief are denied.

### **FORUM FEES**

Pursuant to Rule 10332 (c) of the *Code of Arbitration Procedure*, the following Forum Fees are assessed.

Non-refundable Filing Fee:	\$ 200.00
Hearing Session Fees:	\$7,500.00 (10 hearing sessions @ \$750.00 per session)
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Total Fees:	\$7,700.00

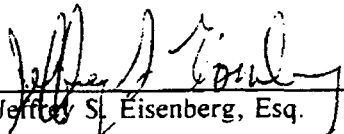
1. Claimant is assessed \$3,850.00. Claimant previously paid \$950.00 and owes a balance of \$2,900.00.
2. Respondents are jointly and severally assessed \$3,850.00 in forum fees. Respondents previously paid \$0.

Fees are payable to the NASD Regulation, Inc.

**ARBITRATION PANEL**

Jeffrey S. Eisenberg, Esq.	-	Public Chairperson
Seth T. Taube, Esq.	-	Public Panelist
John J. Witkowski, Esq.	-	Industry Panelist

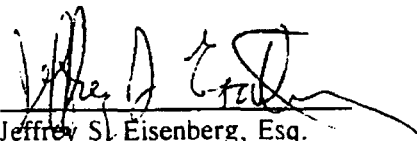
Concurring Arbitrator's Signature

  
Jeffrey S. Eisenberg, Esq.

Date of Decision: February 18, 1997

**AFFIRMATION**

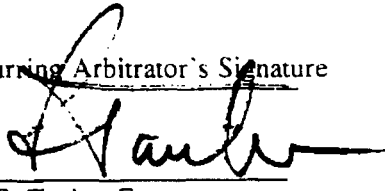
I, Jeffrey S. Eisenberg, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

  
Jeffrey S. Eisenberg, Esq.

ARBITRATION PANEL

Jeffrey S. Eisenberg, Esq.	-	Public Chairperson
Seth T. Taube, Esq.	-	Public Panelist
John J. Witkowski, Esq.	-	Industry Panelist

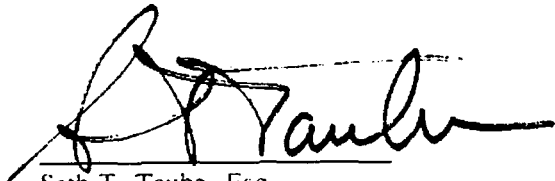
Concurring Arbitrator's Signature

  
Seth T. Taube, Esq.

Date of Decision: February 18, 1997

AFFIRMATION

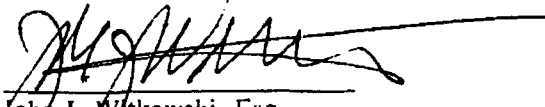
I, Seth T. Taube, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

  
Seth T. Taube, Esq.

**ARBITRATION PANEL**

Jeffrey S. Eisenberg, Esq.	-	Public Chairperson
Seth T. Taube, Esq.	-	Public Panelist
John J. Witkowski, Esq.	-	Industry Panelist

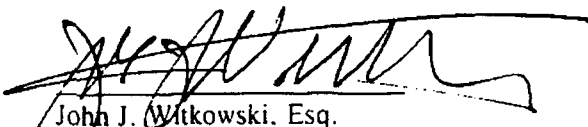
Concurring Arbitrator's Signature

  
John J. Witkowski, Esq.

Date of Decision: February 18, 1997

**AFFIRMATION**

I, John J. Witkowski, do hereby affirm pursuant to Article 7505 of the Civil Procedure Law and Rules, that this is my decision in the above captioned matter.

  
John J. Witkowski, Esq.