

## NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between

Name of Claimant

Ronald C. Belcher

and

94-02122

Name of Respondent

A.R. Baron & Co., Inc.  
Gruntal & Co., Inc.  
Robert J. Gilbert

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### REPRESENTATION OF PARTIES

Ronald C. Belcher ("Claimant") was represented by Susan Bernhardt, Esq., Netzog & McKeever, P.C., Denver, Colorado.

A.R. Baron & Co., Inc. ("Respondent A.R. Baron") and Robert J. Gilbert ("Respondent Gilbert") were represented by David S. Smith, Esq., Smith Campbell & Paduano, New York, New York.

Gruntal & Co., Inc. ("Respondent Gruntal") was represented by Donald N. Cohen, Esq., Gruntal & Co., Inc., New York, New York.

### CASE INFORMATION

The Statement of Claim was filed on or about June 7, 1995. Submission Agreement of Claimant Ronald C. Belcher was signed on May 31, 1994.

Statement of Answer was filed by Respondents A.R. Baron & Co., Inc. and Robert J. Gilbert on or about August 31, 1994. Submission Agreement of Respondent A.R. Baron & Co., Inc. was signed on August 22, 1994 by Jack Wolynez. Submission Agreement of Respondent Robert J. Gilbert was signed on August 22, 1994.

Statement of Answer was filed by Respondent Gruntal & Co., Inc. on or about September 2, 1994. Submission Agreement of Respondent Gruntal & Co., Inc. was signed on September 9, 1994 by Edward E. Bao.

### **HEARING INFORMATION**

A pre-hearing conference was held on October 13, 1995 for one (1) session with James B. Eichberg, presiding.

The hearing was held on October 17, 1995 in Denver, Colorado for a total of one (1) hearing sessions.

### **CASE SUMMARY**

Claimant alleged that Respondent Gilbert made misrepresentations about investments in which he purchased securities for the Claimant; engaged in a pattern of unauthorized trading; repeatedly recommended risky securities that he knew were not suitable for the Claimant and churned the Claimant's account. Specifically, Claimant alleged that Respondent Gilbert made the following unauthorized transactions while employed at Respondent A.R. Baron & Co., Inc.: sold shares of Health Professionals, Inc.; purchased shares in Cryomed; and purchased additional shares of Cypros Pharmaceuticals. Claimant also alleged that Respondent Gilbert while he was employed by Respondent Gruntal & Co., Inc., sold shares and warrants of Cypros to purchase shares of LTX in Claimant's individual and IRA accounts without authorization.

Respondents A.R. Baron & Co., Inc. and Robert J. Gilbert denied the allegations set forth in the Statement of Claim. Respondents specifically stated that all of the trades executed at Respondent Baron were expressly authorized and ratified by Claimant. Respondents also stated that the Claimant had expressed investment objectives of "speculation" and "growth" on his new account application.

Respondent Gruntal & Co., Inc. denied the allegations asserted against it in the Statement of Claim. Specifically, Respondent Gruntal stated that all transaction in the Claimant's accounts were expressly authorized and ratified by the Claimant.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$375,000.

Respondents A.R. Baron & Co., Inc. and Robert J. Gilbert requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

Respondent Gruntal & Co., Inc. requested that the claims asserted against it be denied.

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

The parties have agreed that the Award in this matter may be executed in counterpart and have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD.

### **AWARD**

The parties having settled this dispute prior to the commencement of the hearing, the panel as its Award hereby incorporates the terms of the parties' settlement as follows:

- a. Robert J. Gilbert ("Gilbert") shall pay \$115,000.00 to Ronald C. Belcher ("Belcher"). Upon payment, all claims, liabilities, and actions of any kind whatsoever, from the beginning of the world to the date of this Award, by Belcher and Maxine Belcher against Gilbert shall be released and discharged. The payment by Gilbert shall be deemed to be for settlement of Belcher's breach of contract claim.
- b. A.R. Baron & Co., Inc. ("A.R. Baron") shall pay \$25,000.00 to Belcher. Upon payment, all claims, liabilities, and actions of any kind whatsoever, from the beginning of the world to the date of this Award, by Belcher and Maxine Belcher against A.R. Baron (including but not limited to its past, present, and future parents, subsidiaries, employees, agents, directors, officers, and shareholders, except for Gilbert) shall be released and discharged. The payment by A.R. Baron shall be deemed to be for settlement of Belcher's breach of contract claim.
- c. Gruntal & Co., Inc. ("Gruntal") shall pay \$5,000.00 to Belcher. Upon payment, all claims, liabilities, and actions of any kind whatsoever, from the beginning of the world to the date of this Award, by Belcher and Maxine Belcher against Gruntal (including but not limited to its past, present, and future parents, subsidiaries, employees, agents, directors, officers, and shareholders, except for Gilbert) shall be released and discharged. The payment by Gruntal shall be deemed to be for settlement of Belcher's breach of contract claim.
- d. The release of each respondent provided for above shall be effective upon payment by that respondent as provided for above, without regard to whether any other respondent fails to pay or be released as provided for herein.
- e. All payments set forth in paragraphs 1, 2, and 3 above shall be made no later than 30 days after the date of this Award.
- f. The parties agree that this Award effects a compromise of disputed claims and that this Award is not intended and shall not be construed as an admission of wrongdoing by any party.

- g. Judgment may be entered upon this Award in any court of competent jurisdiction as provided by NASD Code of Arbitration Procedure Section 41 and the Submission Agreements signed by the parties.
- h. If Gilbert fails to make the full payment required in paragraph 1 within the time set forth in paragraph 5, Belcher shall be entitled to reasonable costs and attorney fees incurred in collecting the outstanding amount in addition to interest on the outstanding amount from the date due.
- i. The parties agree that this Award may be executed in counterparts by two of the arbitrators on the panel.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each prehearing conference, if any. There was one (1) sessions x \$300 and one (1) session x \$750 = \$1,050 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 \$200 and shall ~~retain~~ as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant Ronald C. Belcher. Respondent Robert J. Gilbert shall be and hereby is liable for and shall pay to the NASD the sum of \$300 ~~at~~ the balance due for forum fees.

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall ~~assess~~ the non-refundable member surcharge in the amount of \$200 against Respondent A.R. Baron & Co., Inc. Fees are payable to the National Association of Securities Dealers, Inc.

Dated:

/s/ James B. Eichberg  
James B. Eichberg  
Public Arbitrator, Presiding Chair

January 18, 1996

/s/ Raymond N. Mitchell, Jr.  
Raymond N. Mitchell, Jr.  
Industry Arbitrator

January 22, 1996