

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimants

Award #
94-02199

VS.

Name of Respondent

Gruntal & Co., Inc.

REPRESENTATION

For Claimants, M. Maureen Murphy, Sheila J. Franco, John M. Franco, Stephen J. Franco, ("Claimants"), David E. Shellenberger, Esq., located in Boston, Massachusetts.

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

CASE INFORMATION

Statement of Claim was filed on June 8, 1994.

Claimants' Submission Agreements were signed by Maureen Murphy on June 6, 1994, Sheila J. Franco, on April 12, 1994, John M. Franco, II, on June 6, 1994 and Stephen J. Franco, on June 6, 1994.

Statement of Answer was filed by Respondent on October 14, 1994.

Respondent's Submission Agreement was signed on November 10, 1994.

HEARING INFORMATION

Hearing Dates/Sessions: June 06, 1995 - 2 sessions
June 07, 1995 - 2 sessions
June 08, 1995 - 1 session
June 14, 1995 - 2 sessions
June 16, 1995 - 2 sessions

Hearing Location: American Arbitration Association, 133 Federal Street and Boston Marriott Long Wharf, 296 State Street, Boston, Massachusetts.

CASE SUMMARY

Claimants allege that in July, 1989, they opened accounts at Gruntal due to advice from Ms. Devine, an agent of Respondent. Claimants state that Ms. Devine recommended Robert Sides to act as broker on the accounts. Claimants state that in opening accounts, Respondent opened individual accounts rather than joint accounts as requested. Claimants state that Mr. Sides did not contact with Claimants and when Mr. Sides opened new accounts for Claimants, the accounts contained inaccurate information with respect to their ages, net worth, and annual income.

Claimants state that the new accounts reflected speculation as an investment goal and they were not asked about their investment objectives. Claimants also state that they informed Ms. Devine that they wanted conservative investments. Claimants further states that Respondent's conduct of inaccurately and inconsistently completing the new accounts forms reflect its disregard for the suitability of the investments made in the accounts. Claimants allege that 95.3 % of transactions in the individual accounts were speculative and high risk and included short sales and churning. Claimants also state that their accounts were heavily margined without their authorization. Claimants further state that Ms. Devine did not inform of the risks of margin and that she was being charged interest. Claimants state that the use of these speculative techniques were inappropriate for their accounts and that as a result of these transactions, they were forced to pay dividends, commissions, and margin interest.

Claimants state that their legal bases for recovery lie in fraud; violation of Massachusetts Securities Act; breach of contract; negligence and that Respondent is liable for its employee's action under the doctrine of respondeat superior.

Respondent asserts eleven affirmative defenses and denies any and all wrongdoing in connection with Claimants' investment accounts. Respondent alleges that Claimant Murphy had exclusive control of all accounts. Respondent states that Claimant approved all decisions pertaining to the accounts and that all accounts were suitable in light of the Claimants' objective, investment experience and financial situation. Respondent contends that Claimants monitored the accounts and were aware of the status and nature of their investments.

Respondent denies any claims of churning and states that the 4.9% turnovers ratio is below the SEC 6% churning standard. Respondent states that Claimants conceded that she signed a margin account agreement.

Respondent maintains that when Claimant met with Respondent's manager, Claimant was told to mitigate her losses from her investments, and that Claimant ignored this advice. Respondent concludes by stating that Claimant had complete control over her accounts at all times and

received confirmations of all transactions after she approved them, Respondent also states that even if Claimant disapproved of Respondents actions Claimants failure to object constitutes ratification of the transactions.

RELIEF REQUESTED

Claimants request compensatory damages in the amount of \$616,220, interest, costs, attorney's fees and punitive damages in the amount of \$250,000.

Respondent requests dismissal of all claims and an award of any and all costs associated with these proceedings against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies agreed to receive conform copies of the Award while the original remain on file with the NASD.

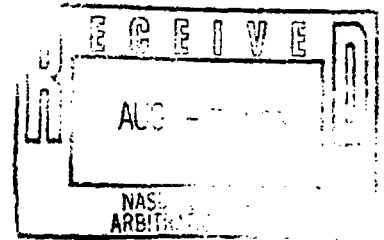
AWARD

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. Respondent is liable to Claimant M. Maureen Murphy and shall pay TWENTY EIGHT THOUSAND SEVEN HUNDRED SEVENTY ONE DOLLARS AND ZERO CENTS. (\$28,771.00) in actual damages.
2. Respondent is liable to Claimant Sheila J. Franco and pay FIVE THOUSAND SEVEN HUNDRED NINETY TWO DOLLARS AND ZERO CENTS (\$5,792.00) in actual damages.
3. Respondent is liable to Claimant John Franco, II and shall pay FIVE THOUSAND THREE HUNDRED DOLLARS AND FORTY THREE DOLLARS AND ZERO CENTS (\$5,343.00) in actual damages.
4. Respondent is liable to Claimant Stephen Franco and shall pay NINE THOUSAND THREE HUNDRED FORTY ONE DOLLARS AND ZERO CENTS (\$9,341.00) in actual damages.
5. Claimants' request for interest, costs, attorney's fees and punitive damages are denied.

Award #94-02199

Page 4



FORUM FEES

Pursuant to Section 43(c) of the *Code of Arbitration Procedure*, the following Forum Fee(s) are assessed and shall be borne equally by the parties.

Non-refundable filing fee: \$250.00

Hearing session fee: \$9,000.00 (9 hearing sessions @ \$1,000.00 per session)

Total Fees = \$9,250.00

1. Claimants are assessed \$4,625.00. Claimants previously deposited \$1,250.00 and owe a balance of \$3,375.00.
2. Respondent is assessed \$4,625.00.

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

ARBITRATION PANEL

William M. Prifti, Esq.	-	Public Chairperson
Brenda R. Katz	-	Public Panelist
Gerald H. Powers	-	Industry Panelist

Concurring Arbitrator's Signature


Brenda R. Katz

Date of Decision: August 16, 1995

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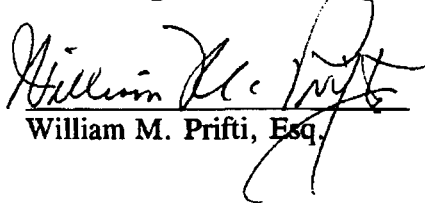
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