

NASD REGULATION, INC.  
AWARD

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In the Matter of the Arbitration Between

Name of Claimants

Juliette Kleinman and Justin Kleinman

vs.

Case No. 94-02241  
Consolidated with  
Case No. 94-04250

Name of Respondents

Gruntal & Co. and Donald Giantonio

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**REPRESENTATION**

For Claimants Juliette Kleinman ("Ms. Kleinman") and Justin Kleinman ("Mr. Kleinman") (collectively "Claimants"), Harold I. Geringer, Esq. from the law of Geringer & Dolan located in New York, New York.

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

For Respondent Donald Giantonio ("Giantonio"), Michael O'Leary, Esq. located in Cliffside Park, New Jersey.

**CASE INFORMATION**

Claimants Ms. Kleinman's and Mr. Kleinman's Statements of Claim were filed on June 10, 1994 and October 13, 1994, respectively.

Ms. Kleinman's Submission Agreement was signed on June 10, 1994.

Mr. Kleinman's Submission Agreement was signed on October 12, 1994.

Respondent Gruntal's Statements of Answer were filed on December 19 and 30, 1994.

Respondent's Submission Agreements were signed on January 24, 1995 and August 28, 1995.

Respondent Giantonio's Statement of Answer was filed on November 15, 1995.

Respondent Giantonio's Submission Agreement was signed on November 15, 1995.

**HEARING INFORMATION**

Pre-Hearing Conferences:	November 7, 1995	-	1 session (Full Panel)
	January 10, 1997	-	1 session (Chair Only)

Hearing Dates/Sessions:	January 28, 1997	-	2 sessions
	January 29, 1997	-	2 sessions
	June 11, 1997	-	2 sessions
	June 30, 1997	-	2 sessions
	July 1, 1997	-	2 sessions
	April 28, 1998	-	2 sessions
	April 29, 1998	-	2 sessions
	September 9, 1998	-	2 sessions.

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

### CASE SUMMARY

Claimants allege that at the time they opened their accounts, Ms. Kleinman was twenty-two years old and Mr. Kleinman twenty-five, had little to no investment experience, and relied upon Gruntal and Giantonio, their broker and registered representative, hereinafter Respondents, for investment consistent with their financial situation and conservative investment goals. Claimants also allege that their new account forms, which they did not sign, contain fictitious and inflated information that Ms. Kleinman had an \$800,000 net worth and a \$70,000 annual income and that Mr. Kleinman had a \$500,000 net worth and a \$50,000 annual income. Claimants also allege that Gruntal's manager and compliance officer wrongfully approved the accounts without verifying the information. Claimants assert that Gruntal was a market maker in a majority of the securities that were purchased for their accounts. Claimants also assert that Gruntal failed to supervise Giantonio and that Respondents violated various common laws, securities laws, and NASD rules and regulations.

Additionally, Ms. Kleinman contends that Respondents negligently and recklessly handled her account by making unauthorized trades which included trading on margin and recommending speculative securities while earning substantial commissions and profits. Ms. Kleinman also contends that Respondents increased her margin position by 500 percent. She states that she opened the account with \$92,447.00 in November 1992 and by January 28, 1994, the account had only \$2,106.00.

Gruntal denies the allegations of wrongdoing and asserts eleven affirmative defenses. Gruntal contends that Claimants made or approved all decisions pertaining to their account and the transactions were suitable in light of her investment objectives, experience and financial situation. Gruntal states that in the securities industry, New Account Forms are not signed by the client.

Gruntal also states that its records show that Ms. Kleinman opened her first account on

November 15, 1991 and Mr. Kleinman in October 29, 1991, with Alex Wu and listed their investment objectives as growth, capital gains, and speculation. Gruntal alleges that notwithstanding the prior accounts, on October 22, 1992, Claimants each opened another account with Giantonio as their registered representative. Gruntal alleges that they identified their investment objectives as growth, income, capital gains, and speculation. Gruntal further states that while Ms. Kleinman's first new account form listed her net worth as \$800,000 and her income as \$70,000, the second new account form showed a reduced net worth and income of \$250,000 and \$40,000, respectively. Gruntal states that similarly, Mr. Kleinman's second new account form showed a reduced net worth from approximately \$1,000,000 to \$500,000 and income from \$500,000 to \$50,000. Gruntal contends that although it invited Claimants to comment upon the financial information and investment objectives on both of their accounts, they did not object, but returned the signed agreements. Gruntal also contends that Claimants received confirmations, monthly statements, and several letters from the branch manager concerning the transactions in their accounts.

Giantonio incorporates by reference Gruntal's Statement of Answer and relies upon his statements in two letters that he submitted to the New York Stock Exchange. Giantonio contends that Claimants' investment strategies were "to make money". He claims that he explained the margin agreement to Claimants and that the only trades made without their prior knowledge were back office liquidation sales to meet margin calls.

#### **RELIEF REQUESTED**

Claimants request and award of \$79,367.60 for Ms. Kleinman, an award of \$66,339.36 for Mr. Kleinman, attorney's fees and costs, interest on the lost principal and margin interest, and punitive damages. Ms. Kleinman specifically requested punitive damages equal to three times the actual damages.

Gruntal requests that the Statements of Claim be dismissed in their entirety and that any and all costs associated with the arbitration proceedings be assessed against Claimants.

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

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 original remains on file with the NASD.

Prior to the hearings, this panel granted Claimants' request to consolidate their cases.

#### **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. Respondents are jointly and severally liable to Juliette Kleinman and shall pay her \$44,857.20, which amount is inclusive of interest and all relief requested;
2. Respondents are jointly and severally liable to Justin Kleinman and shall pay him \$22,233.10, which amount is inclusive of interest and all relief requested;
3. Claimant's requests for punitive damages are denied; and,
4. All other claims for relief including attorneys' fees and costs are denied.

#### **OTHER COSTS**

Pursuant to Rule 10333 of the *Code of Arbitration Procedure ("Code")* Gruntal has paid NASD Regulation, Inc. \$200.00 of the \$350.00 member surcharge due under Case No. 94-02241 and \$200.00 of the \$300.00 member surcharge due under Case No. 94-04250. Therefore, Gruntal owes \$150.00 under Case No. 94-02241 and \$100.00 under Case No. 94-04250 in member surcharges.

Gruntal is assessed \$750.00 for the postponement of the May 20 and 21, 1996 hearings. This fee has not been paid.

#### **FORUM FEES**

Pursuant to Rule 10332(c) *Code*, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee deposited by Claimants and have assessed the following Forum Fees which shall be borne equally between the parties:

2 Pre-hearing conferences	-	\$ 1,050.00
16 Hearing Sessions	-	12,000.00
Total Fees	-	\$13,050.00

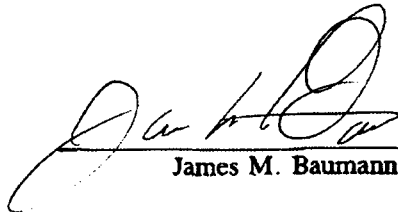
1. Claimants are jointly and severally assessed \$6,525.00 in forum fees. Claimants previously paid \$1,250.00 and owe a \$5,175.00 balance.
2. Respondents are jointly and severally assessed \$6,525.00 in forum fees.

Fees are payable to NASD Regulation, Inc.

**ARBITRATION PANEL**

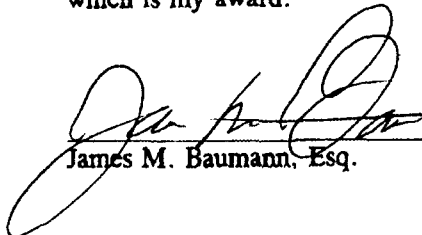
James M. Baumann, Esq.	-	Public Chairperson
John H. Ball, Esq.	-	Public Panelist
Alvin Gallant	-	Industry panelist

**CONCURRING ARBITRATOR'S SIGNATURE**

  
James M. Baumann, Esq.

Date of decision: OCTOBER 9, 1998

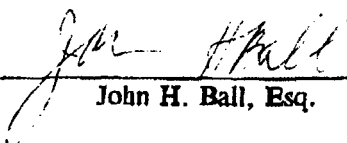
I, James M. Baumann, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
James M. Baumann, Esq.

**ARBITRATION PANEL**

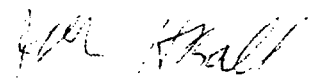
James M. Baumann, Esq.	-	Public Chairperson
John H. Ball, Esq.	-	Public Panelist
Alvin Gallant	-	Industry Panelist

**CONCURRING ARBITRATOR'S SIGNATURE**

  
\_\_\_\_\_  
John H. Ball, Esq.

Date of decision: OCTOBER 9, 1998

I, **John H. Ball, Esq.**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
\_\_\_\_\_  
John H. Ball, Esq.

**ARBITRATION PANEL**


James M. Baumann, Esq.	-	Public Chairperson
John H. Ball, Esq.	-	Public Panelist
Alvin Gallant	-	Industry Panelist

**CONCURRING ARBITRATOR'S SIGNATURE**

  
\_\_\_\_\_  
Alvin Gallant

Date of decision:  1998

I, **Alvin Gallant**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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Alvin Gallant