

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Diane Simmons

94-04147

Name of Respondents

Gruntal & Co., Inc.
Donald J. Giantonio

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 6, 1994, Claimant Diane Simmons ("Claimant"), who appeared Pro Se, alleged that Respondent Gruntal & Co., Inc., through its account executive, Respondent Donald J. Giantonio ("Giantonio"), recommended several unsuitable investments which were not in accordance with her stated investment objective of "safety of principal". Claimant further alleged that Giantonio made misrepresentations regarding the nature of these investments, and further that Giantonio made an unauthorized purchase of 1,000 shares of Video Lottery Systems ("VLS") for her margin account. The Claimant asserted that Respondent Giantonio failed to follow her instructions to sell her shares of Triad Systems Corp. ("TSC") stock as directed which led to two postponements for a closing to purchase a home, even though she had explained to Respondent Giantonio that it was vital her principal remained in tact for this purchase. The Claimant alleged that Respondent Giantonio misrepresented the price for which her TSC stocks were sold, which forced her to raise additional funds on the day of the closing, and that he had no explanation for this. Claimant Simmons contended that upon further attempts to contact Giantonio, she was informed that he was no longer in Respondent Gruntal's employ, and as a result of the wrongdoing of the Respondents, she has suffered a loss for which they should be liable.

Respondent Gruntal & Co., through its representative and in-house counsel, Eric S. Hunter, maintained that the investments recommended for Claimant's account were suitable for the objectives stated on her account form, which were "Growth, Income and Speculation". Respondent Gruntal further maintained that the Claimant signed a customer agreement that established a margin account and she did not "strike" the margin clause, which she had the option to do if she chose. Respondent Gruntal contended that Claimant's investments in Pier 1 Imports and Integrated Device Technology, Inc. yielded profits, but she chose to sell her Cambridge Biotech and TSC stocks at a time when the prices were low, and therefore were sold at a loss. Respondent Gruntal further contended that Claimant solicited the purchase of the VLS stock, and that she authorized the purchase of those shares, and maintained that the only problem is that Claimant lost money and is unhappy with her investment results, and further maintained it committed no wrongdoing, therefore, should not be held liable in this matter.

Respondent Donald J. Giantonio failed to file a Statement of Answer to the Statement of Claim.

RELIEF REQUESTED

Claimant Diane Simmons, requested \$10,000.00 in actual damages.

Respondent Gruntal & Co., requested that the claims of the Claimant be dismissed.

Respondent Donald Giantonio failed to file a Statement of Answer to the Statement of Claim.

OTHER ISSUES CONSIDERED AND DECIDED

In accordance with Section 13 of the NASD Code of Arbitration Procedure, the Respondent Donald Giantonio, was served by regular mail and given an opportunity to respond, which he failed to do. In addition, service of the notice of the identity of the Arbitrator, which was sent certified mail, was effected as evidenced by a return receipt card on file at the NASD

Pursuant to the By-laws of the NASD, the Arbitrator determined that Respondent Donald Giantonio, had notice of the claim, and was required to submit to this arbitration proceeding, and is therefore, bound by the Arbitrator's ruling and determination.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, James A. Smith IV, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Diane Simmons, on October 6, 1994, by the Respondent Gruntal & Co., on December 30, 1994 but not by Respondent Donald Giantonio, as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The Respondents Gruntal & Co., and Donald Giantonio are jointly and severally liable and shall pay to the Claimant Diane Simmons \$2,500.00 in actual damages.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. Respondents Gruntal & Co., and Donald Giantonio are jointly and severally liable and shall pay to the Claimant Diane Simmons \$150.00 as reimbursement of the filing fee.

Affirmation

STATE OF

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COUNTY OF

I, JAMES A. SMITH, IV, do hereby affirm upon my oath
as arbitrator that I am the individual described in and who executed this instrument,
which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: February 22, 1996