

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

John M. Veltri

NASD Arbitration  
No. 95-00349

Name of Respondent(s)

Eric Rand  
Commonwealth Associates  
Gruntal & Co., Incorporated

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REPRESENTATION

For Claimant: Cedric Choi, Esq., Honolulu, Hawaii

For Respondent Eric Rand: David Crystal II, Esq., Gilbride, Tusa,  
Last & Spellane LLC, New York, New York

For Respondent Commonwealth Associates: J.P. Wilson, Esq.,  
Commonwealth Associates, New York, New York

For Respondent Gruntal & Co., Incorporated: Eric S. Hutner, Esq.,  
Gruntal & Co., Incorporated, New York, New York

CASE INFORMATION

Statement of Claim filed: January 20, 1995

Claimant's Submission Agreement signed: January 5, 1995

Statement of Answer filed by Respondent Eric Rand: March 21, 1995

Statement of Answer filed by Respondent Commonwealth Associates:  
March 21, 1995

Statement of Answer filed by Respondent Gruntal & Co.,  
Incorporated: March 21, 1995

Respondents' Submission Agreements signed as follows:

Eric Rand: April 29, 1996

Commonwealth Associates: March 21, 1995

Gruntal & Co., Incorporated: March 20, 1995

#### HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

March 6, 1996 (one session)

April 11, 1996 (one session)

Hearing Date(s)/Session(s): July 15, 1996 (two sessions)

July 16, 1996 (three sessions)

Hearing Location:

Honolulu, Hawaii

#### CASE SUMMARY

Claimant alleged the following causes of action with respect to his investments in Sapiens International Corp. (Sapiens) and Lottery Enterprises, Inc. (Lotto): 1) violations of Federal Securities Laws; 2) violation of Hawaii Securities Act; 3) violation of Hawaii Unfair and Deceptive Trade Practices Act; 4) Common Law Fraud; 5) Breach of Fiduciary Duty; and 6) Negligence and Gross Negligence.

Respondent Eric Rand denied Claimant's allegations of wrongdoing and alleged that Claimant has submitted false and fraudulent claims in the hopes of retrieving trading losses for which Claimant himself is responsible. Respondent Rand further alleged that the above-captioned dispute is nothing more than a classic case of a knowledgeable sophisticated investor seeking to hold his broker as a guarantor of all of his activity. Respondent Rand further alleged that in the Statement of Claim, Claimant Veltri attempts to construct a scenario of fraudulent and/or negligent conduct on the part of Respondents in their dealings with Veltri; that the crux of the claims is that Veltri was misled into purchasing unsuitable stocks; and that nothing could be further from the truth. Respondent Rand further alleged that the true facts reveal that Veltri was at all times fully and accurately

apprised of the investments presented to him and, after due consideration, Veltri not Rand or anyone else, made the ultimate decision whether to purchase or pass. Respondent Rand further alleged that the facts also reveal that this is nothing more than a two stock case in which Veltri seeks to recoup losses generated by his holdings in Sapiens and Lottery, holdings which Veltri chose to buy despite risks he was fully aware of, and holdings which were wholly suitable for the account given Veltri's background and investment sophistication, as well as his specific objectives for the account.

Respondent Commonwealth Associates (Commonwealth) denied any wrongdoing on its part regarding Claimant's Commonwealth account and alleged that all transactions in the account were carried out in conformity with all applicable laws, regulations, rules, practices and agreements between Commonwealth and Claimant. Commonwealth further alleged that its employees, including Respondent Rand, were at all times properly supervised. Commonwealth further alleged that on information and belief, Claimant is a relatively sophisticated investor who has traded in other speculative securities at Commonwealth and other brokerage firms; Claimant is reported to have had an approximate net worth of over \$100,000.00 and an approximate annual income of over \$100,000.00.; and that Claimant represented to Commonwealth that his investment objective was growth. Respondent Commonwealth also asserted affirmative defenses.

Respondent Gruntal & Co., Incorporated (Gruntal) denied each and every allegation that it breached any duty owed to Claimant, that it engaged in wrongful conduct or that it harmed Claimant in any way. Gruntal alleged that at all times it met all duties owed to Claimant and that Gruntal is in no way liable for any losses that Claimant incurred. Gruntal further alleged that Claimant, an experienced investor and established businessman, was able to appreciate and assimilate the information supplied by Rand and that Claimant's background contradicts his attempts to portray himself as a securities novice who blindly followed Rand's recommendations. Gruntal further alleged that based on the information supplied to Rand and recorded on the New Account Form, Claimant's purchase of Sapiens was consistent with his investment objectives and financial wherewithal. Gruntal also asserted affirmative defenses.

### RELIEF REQUESTED

Claimant requested actual damages, together with prejudgment interest at the legal rate of 10% from the date of purchase, costs, punitive damages, and such other relief as is deemed necessary and proper. Claimant asserted that his capital loss of approximately \$100,000.00 should be trebled to \$300,000.00 and the Claimant should be further awarded prejudgment interest at the statutory rate of 10% per annum, the costs of this proceeding and his attorneys fees under Sections 480-2 and 480-13 of the Hawaii Revised statutes or, in the alternative the Claimant should be made whole by an award of his capital loss plus prejudgment interest, the lost portfolio value of his investment, the costs of this proceeding and such attorneys fees as may be allowed by law.

Respondent Rand requested dismissal of Claimant's claims in their entirety.

Respondent Commonwealth requested an award dismissing Claimant's claims with prejudice and requested that costs of this arbitration be assessed against Claimant.

Respondent Gruntal requested that Claimant's Statement of Claim be dismissed in its entirety with costs, reasonable attorney's fees and travel and lodging expenses awarded to Gruntal.

### OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 originals remain on file with the National Association of Securities Dealers, Inc. (NASD).

### 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. All claims by Claimant, including the claim for punitive damages, are dismissed.

2. The parties shall each bear their respective costs including attorney's fees.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain the \$750.00 hearing session deposit previously deposited by the Claimant. Forum fees shall be assessed one-half to Claimant and the other half shall be divided equally among the Respondents. Forum fees are calculated as follows:

Two pre-hearing sessions @ \$300.00/session	=	\$ 600.00
Five hearing sessions @ \$750.00/session	=	<u>\$3,750.00</u>
Total fees assessed	=	\$4,350.00
 Claimant Veltri's share	=	\$2,175.00
Credit for hearing deposit	=	\$ 750.00
Balance due	=	\$1,425.00
 Eric Rand's share	=	\$ 725.00
Balance due	=	\$ 725.00
 Commonwealth Associates' share	=	\$ 725.00
Balance due	=	\$ 725.00
 Gruntal & Co., Incorporated's share	=	\$ 725.00
Balance due	=	\$ 725.00

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

#### ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Vernon F.L. Char, Esq.	Public Arbitrator
Susan Jameson, Esq.	Public Arbitrator
Larry C. Jackson	Industry Arbitrator

Concurring Arbitrators' Signatures

Vernon F.L. Char

Vernon F.L. Char

Vernon F.L. Char, Esq.

Susan Jameson, Esq.

Larry C. Jackson

Date of Decision: \_\_\_\_\_

Date Served: 08/14/96

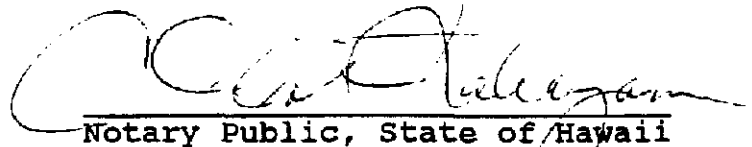
STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

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)  
) SS.

On this 7th day of August, 1996, before me personally appeared Vernon F. L. Char, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

L.S.



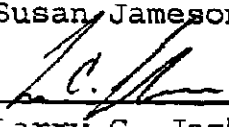
Notary Public, State of Hawaii

My Commission Expires: 9/18/98

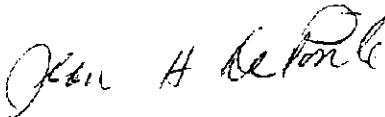
Concurring Arbitrators' Signatures

\_\_\_\_\_  
Vernon F.L. Char, Esq.

\_\_\_\_\_  
Susan Jameson, Esq.

  
\_\_\_\_\_  
Larry C. Jackson

Date of Decision: \_\_\_\_\_



Date Served: 08/14/96

MY COMMISSION EXPIRES 2/1/2000



Concurring Arbitrators' Signatures

\_\_\_\_\_  
Vernon F.L. Char, Esq.

\_\_\_\_\_  
Susan Jameson, Esq.

\_\_\_\_\_  
Larry C. Jackson

Subscribed and sworn to (or affirmed)  
before me this 6<sup>th</sup> day of Aug., 1996

[Signature]  
Notary Public, State of Hawaii

My commission expires: 2-7-97

Date of Decision: \_\_\_\_\_

Date Served: 08/14/96