

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James P. Beardsley

95-00766

Name of Respondent

Howard Silverman

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on February 13, 1995 Claimant James P. Beardsley ("Claimant"), who appeared Pro Se, alleged that Respondents Gruntal & Co., Inc. ("Gruntal") and Howard Silverman ("Silverman"), aggressively handled Claimant's account using high pressure sales pitches which prompted Claimant to agree to a purchase so that the conversation would terminate. Claimant further alleged that he agreed to buy shares of Quaker, IntDev, VLSI Tech, Quad System, Mentor, LTX Corp., Weitek, Design, HomeSp and Wrrntec from September to November 1993 because he trusted Gruntal. Claimant asserted that the sales efforts did not take into account his investment needs but merely promoted Respondents' desire to churn the account and generate commissions. Claimant further asserted that Gruntal failed to supervise the Account Executive who made the recommendation and failed to ensure that responsible service was provided in a professional manner. Claimant contended that Gruntal never followed-up his complaints to determine the cause of his dissatisfaction which he listed on its questionnaire form. Claimant further contended that as a result of the disastrous losses suffered from Gruntal's recommendations, the Respondents should not profit from those losses induced with heavy sales pitches. Claimant also contended he has suffered a horrendous reduction in portfolio equity and that as a result of the above the Respondents should be held liable.

Respondents through their representative and in-house counsel, Harry D. Frisch, Esq., maintained that Silverman played no role in effecting the transactions which Claimant complains of, and as a result Claimant has no claim against Silverman. Respondents further maintained that Claimant's failure to object after receiving the confirms and statements constituted

ratification and acquiescence of each and every trade. Respondents contended that Claimant is an experienced investor who was aware of the risks involved with investments and that his losses were a result of market conditions and his own investment decisions. Respondents further contended that Claimant's specific investment objectives included growth and capital and that safety of the investments was not a goal. Respondents asserted that had Claimant been so dissatisfied with the service he received he would have ceased doing business with Gruntal. Respondent further asserted that he continued doing business and at the very least, ratified all trades in his account. Gruntal further contended that they had a comprehensive system of supervision that was properly implemented based upon information available to them. Respondents denied any wrongdoing or violation of the securities laws, and asserted that they should not be held liable.

In a response to the answer Claimant alleged that he made objections about his account activity and Gruntal never responded. Claimant further alleged that he was an investor with no knowledge of the market and that Gruntal never educated him as to the risks involved with investing.

OTHER ISSUES CONSIDERED AND DECIDED

The arbitrator considered and reviewed all documentation submitted by the parties concerning Respondent Silverman's Motion to Dismiss the claims against him. The arbitrator denied the Motion.

RELIEF REQUESTED

Claimant James P. Beardsley, requested \$9,999.64 in actual and compensatory damages.

Respondents Gruntal & Co., Inc. and Howard Silverman, requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Jefferson R. Truluck, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant James P. Beardsley on December 10, 1995 and February 7, 1996 and by Respondent Gruntal & Co., Inc. on June 3, 1996 and Howard Silverman February 2, 1996.


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. Respondent Gruntal & Co., Inc. is liable and shall pay to the Claimant James P. Beardsley \$8,225.00 in actual damages.

2. Respondent Gruntal & Co., Inc. is liable and shall pay to the Claimant James P. Beardsley simple interest at the rate of 8% from January 1, 1994 until date of payment of the award.
3. Respondent Howard Silverman is liable and shall pay to the Claimant James P. Beardsley \$1,250.00 in actual damages.
4. Respondents Howard Silverman and Gruntal & Co., Inc. are jointly and severally liable and shall pay to the Claimant James P. Beardsley simple interest at the rate of 8% from January 1, 1994 to date of payment of the award.
5. The parties shall bear their respective costs.
6. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant James P. Beardsley shall be retained by the NASD, Inc. Respondents Howard Silverman and Gruntal & Co., Inc. are jointly and severally liable and shall pay to the Claimant \$150.00 as reimbursement of the filing fee.
7. All other relief requests are denied.

AFFIRMATION

I, **JEFFERSON R. TRULUCK, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: August 27, 1996