

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Herman S. Levine

and

NASD Case Number: 95-01864

Name of Respondents

Sheldon France
Gruntal & Company, Inc.

REPRESENTATION OF PARTIES

Claimant Herman S. Levine was represented by W. J. (Tunny) Wilson, Esq. of Moses, Dunn, Farmer & Tuthill, P.C. located in Albuquerque, New Mexico.

Respondent Gruntal & Company, Inc. was represented by Eric S. Hunter, Esq. of Gruntal & Company, Inc. located in New York, New York.

Respondent Sheldon France appeared pro se.

CASE INFORMATION

The Statement of Claim was filed with the National Association of Securities Dealers, Inc. ("NASD") by Claimant Herman S. Levine on or about April 18, 1995.

Claimant's Submission Agreement was signed on April 11, 1995.

The Statement of Answer was filed with the NASD by Respondent Gruntal & Company, Inc. on or about June 30, 1995.

Respondent Gruntal & Company, Inc.'s Submission Agreement was signed on May 20, 1995 by Robert Sablowsky, Executive Vice President of Gruntal & Company, Inc.

The Statement of Answer was filed with the NASD by Respondent Sheldon France on or about June 30, 1995.

Respondent Sheldon France's Submission Agreement was signed on June 30, 1995.

HEARING INFORMATION

The Hearing was held on May 15, 1996 for two (2) sessions and May 16, 1996 for two (2) sessions. The Hearing location was Albuquerque, New Mexico.

CASE SUMMARY

Claimant Herman S. Levine ("Claimant") alleged that in early March of 1993 Respondent Sheldon France ("France"), a registered representative of Respondent Gruntal & Company, Inc. ("Gruntal"), made a cold call to Claimant to solicit Claimant to purchase stock through Gruntal & Company, Inc. Claimant contended that at the time of Respondent France's call Claimant was unsophisticated in matters pertaining to stocks. Claimant asserted that he told Respondent France that his investments objectives were growth, capital gains, income and speculation, but that he could not tolerate high risk situations. Claimant alleged that Claimant so relied upon the recommendations of Respondent France that France effectively exercised de facto control over Claimant's account. Claimant asserted that France recommended an excessive number of transactions without adequately researching the merits or suitability of the transactions. Claimant alleged that Respondent France intended to use Claimant's investment funds to generate excessive commission income, excessive profits on over the counter securities and excessive margin interest to Respondents. Claimant maintained that Gruntal was negligent by failing to supervise Claimant's account. Claimant alleged that Respondents' conduct violated numerous federal and state laws, including: Section 10(b) of the Securities Exchange Act of 1934; N.M. Stat. Ann. Section 58-13B-30(A); and N.M. Stat. Ann. Section 58-13B-30(C). Claimant asserted other claims, including: negligent hiring and negligent supervision.

Respondents Gruntal & Company, Inc. and Sheldon Levine denied all liability to Claimant in their Statement of Answer. Respondents alleged that the level of activity in Claimant's accounts was not unduly excessive and the investment recommendations provided to the Claimant were not unsuitable in light of Claimant's investment objectives. Respondents asserted that the Claimant was not as unsophisticated and inexperienced as Claimant suggested. Respondents contended that the Claimant desired an actively traded account and initiated most decisions to sell and buy. Gruntal maintained that its supervision over the Claimant's accounts was adequate and appropriate. Respondents asserted various affirmative defenses, including: doctrine of laches; that Claimant failed to state a claim upon which relief can be granted; that Claimant failed to mitigate his damages, and that various claims should be dismissed pursuant to the applicable statutes of limitation.

RELIEF REQUESTED

Claimant Herman S. Levine requested an award of compensatory damages in the amount of \$98,637.16, plus commissions, plus lost value to his account, punitive damages, pre-award and post-award statutory interest, costs and attorney's fees.

Respondents Gruntal & Company, Inc. and Sheldon France requested (1) the Statement of Claim be dismissed in its entirety, (2) Respondents be awarded the costs and disbursements of this action, including attorney's fees, and (3) the Arbitration Panel award such other relief as it deems just and proper.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed to receive conformed copies of the award while the original(s) remain on file with the 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. The Statement of Claim is hereby dismissed in its entirety with prejudice;
2. Respondent Gruntal and Company, Inc. shall reimburse Claimant Herman S. Levine for the NASD filing fee in the amount of Two Hundred Dollars and No Cents (\$200). Respondent Gruntal and Company, Inc. shall also reimburse Claimant Herman S. Levine for the NASD hearing session deposit in the amount of Seven Hundred and Fifty Dollars and No Cents (\$750);
3. Respondent Gruntal & Company, Inc. shall pay all forum fees incurred in this matter, as specified below;
4. Other than forum fees which are specified below, the parties shall each bear their own costs, expenses and attorneys' fees incurred in this matter; and
5. Any relief not specifically enumerated is hereby denied.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session. There were four (4) hearing sessions x \$750 = \$3,000 in forum fees. Pursuant to §43(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$200 previously deposited with the NASD by the Claimant Herman S. Levine. The NASD shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD by the Claimant Herman S. Levine. The NASD shall retain the Section 45 Member Surcharge in the amount of \$350.

Respondent Gruntal & Company, Inc. is assessed and shall pay forum fees in the amount of \$2,250.

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

Concurring Arbitrators' Signatures

\s\ Barry H. Barnett, Esq.
Barry H. Barnett, Esq.
Chairperson
Public Arbitrator

May 28, 1996
Dated:

\s\ Donald W. Hurst
Donald W. Hurst
Panelist
Public Arbitrator

May 29, 1996
Dated:

\s\ Jack G. Till
Jack G. Till
Panelist
Industry Arbitrator

May 29, 1996
Dated:

For NASD use only:
Date award served on the parties: June 7, 1996