

NASD REGULATION AWARD

In the Matter of the Arbitration Between

Name of Claimant

Saul L. Victor

95-02867

Name of Respondents

Gruntal & Co., Inc.
Julian Irwin Stoopler
Evan Russell Stoopler
Ehrenkrantz, King, Nussbaum, Inc.

REPRESENTATION

For claimant Saul L. Victor ("claimant") appeared David E. Robbins, Esq., of the law offices Kaufman, Feiner, Yamin, Gildin & Robbins, located in New York, New York.

For respondents Gruntal & Co., Inc. ("Gruntal") and Ehrenkrantz, King, Nussbaum, Inc. ("EKN") appeared Clifford G. Thau, Esq., of the law offices Squadron, Ellenoff, Plesent & Sheinfeld, located in New York, New York.

For respondents Julian Irwin Stoopler and Evan Russell Stoopler (collectively the "Stooplers") appeared David S. Richan, Esq., of the law offices Tenzer Greenblatt, LLP, located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on: June 12, 1995.

Claimant's Submission Agreement was signed on: June 9, 1995.

Gruntal and EKN filed a Joint Statement of Answer on: August 15, 1995.

EKN's Submission Agreement was signed on: August 15, 1995.

Gruntal did not file a properly executed Submission Agreement.

The Stooplers filed a Joint Statement of Answer on: August 8, 1995.

Julian Stoopler's Submission Agreement was signed on: August 8, 1995.

Evan Stoopler's Submission Agreement was signed on: August 8, 1995.

HEARING INFORMATION

Pre-Hearing Conference:	September 30, 1996	One Session
Hearing Dates/Sessions:	October 3, 1996	Two Sessions
	November 21, 1996	Two Sessions
	December 4, 1996	Two Sessions
	May 28, 1997	Two Sessions
	July 22, 1997	Two Sessions
	September 4, 1997	Two Sessions
	September 5, 1997	Two Sessions
	October 14, 1997	One Session

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

CASE SUMMARY

Claimant alleged that, in the summer of 1993, Julian Stoopler, his friend of many years and his broker for a shorter period, asked whether he was willing to invest up to \$200,000 of his \$700,000 IRA account with Evan Stoopler, Julian Stoopler's 26 year old son, who would be engaging in discretionary trading within certain agreed-upon limits. Claimant contended that they agreed that only New York Stock Exchange listed companies would be purchased, that sales would take place when purchased stocks were either up or down 2 points, that shares would be traded at \$.06 a share and that Julian Stoopler would supervise his son's activities. In addition, claimant contended that the Stooplers exceeded the \$200,000 limit and sent to him false and misleading profit and loss statements which he believed to be accurate and upon which he relied. Claimant alleged that, in December 1994, he began to carefully review the trading which had taken place and discovered that Evan Stoopler was using an inherently speculative strategy of "bottom fishing" for his entire IRA account, without limitations. Claimant maintained that, although trading authorization was agreed to be within certain limitations, he never signed any trading authorization forms and the two forms which the Stooplers claimed to be genuine actually contained his forged signature.

Based upon the foregoing, claimant alleged that the Stooplers breached their fiduciary duty by violating the agreed upon limits of discretionary trading in his IRA account. Claimant further alleged that the deceptive acts and practices of respondents were in violation of industry rules, that EKN failed to supervise the Stooplers, and that EKN and Gruntal failed to distinguish themselves from each other, leading claimant to believe his account was with Gruntal.

EKN and Gruntal maintained that, pursuant to the terms of claimant's Client Agreement, EKN, not Gruntal, had sole responsibility for the supervision of the Stooplers. EKN and Gruntal further maintained that the Stooplers informed claimant that EKN was the introducing broker on his IRA account and that claimant's monthly account statements confirmed EKN as the

introducing broker. EKN and Gruntal further maintained that claimant failed to object to trades in his account in a timely fashion.

EKN and Gruntal maintained that claimant could have eliminated or reduced his trading losses by: reading and adhering to the terms of the Client Agreement, stopping the trading in the account once he realized that he could not keep track of the trades, reviewing the accurate and timely information in his monthly statements, and by contacting any principal of EKN at any time with questions concerning his account. EKN and Gruntal contended that EKN established and maintained a supervisory system in accordance with NASD regulations which included reviewing claimant's account history, reviewing the transactions for claimant's account on a daily basis, reviewing monthly statements to monitor any changes in the level or type of trading and communicating with the Stoopers to discuss the activity in claimant's account and the strategies being utilized. EKN and Gruntal contended that, notwithstanding EKN's supervisory procedures, any alleged misconduct by the Stoopers was not and could not have been known to EKN's or Gruntal's principals and should not be attributable to EKN or Gruntal for purposes of determining liability.

The Stoopers maintained that all transactions in claimant's account were in accordance with all applicable laws, rules, and regulations. The Stoopers further maintained that all investments were suitable for claimant and denied that they misrepresented any material fact to claimant or that they breached their fiduciary duty to him. The Stoopers also maintained that at no time did they present themselves to be employees of Gruntal and that all documents contained the EKN logo.

The Stoopers maintained that claimant signed the discretionary trading form for his account and, thereby, granted them limited trading discretion over his account. The Stoopers further maintained that no limits were put on the type of trades that were to take place and that claimant only stated that he wished to invest approximately \$250,000 of the IRA in short-term trading investments. The Stoopers also maintained that profits and losses were never misrepresented to claimant and that handwritten profit and loss statements were approximations and done as a favor at claimant's request.

RELIEF REQUESTED

Claimant requested compensatory damages in an amount of at least \$193,990.00, plus punitive damages, interest, forum fees, legal fees, and expert witness fees.

Gruntal and EKN requested that the Statement of Claim be dismissed with prejudice and that all costs be assessed against claimant.

The Stoopers requested that the Statement of Claim be dismissed with prejudice and that all costs be assessed against claimant.

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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 originals remain on file with NASD Regulation.

The panel made the following determinations concerning Gruntal, who did not file a Submission Agreement:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the panel found subject matter jurisdiction over this entire controversy.
2. The panel found that Gruntal was a member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Gruntal pursuant to Rule 10301 of the Code.
3. The panel found that Gruntal was required to file a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Gruntal pursuant to Rule 10314(a) of the Code.

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. Claimant's claims against Gruntal are hereby denied in their entirety.
2. Claimant's claims against EKN are hereby denied in their entirety.
3. The Stoopers be and hereby are jointly and severally liable for and shall pay to claimant the sum of **FIFTY THOUSAND DOLLARS (\$50,000.00)**.
4. Claimant's request for punitive damages is hereby denied.
5. Claimant's requests for attorneys' fees and interest are hereby denied.
6. All other requests are hereby denied in their entirety.

FORUM FEES

Pursuant to Rule 10332(g) of the Code, the arbitrators have determined that NASD Regulation shall retain the \$200.00 non-refundable filing fee deposited by claimant, the \$350.00 member surcharge deposited by Gruntal, and the \$350.00 member surcharge deposited by EKN and have assessed the following forum fees:

1 pre-hearing conference x \$300.00	=	\$ 300.00
15 hearing sessions x \$750.00	=	\$11,250.00

1. Claimant be and hereby is liable for the sum of \$5,775.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$750.00 with NASD Regulation and, therefore, shall pay the balance of \$5,025.00.
2. The Stoopers be and hereby are jointly and severally liable for and shall pay the sum of \$5,775.00, representing one-half of the total amount of forum fees assessed.

Fees are payable to NASD Regulation, Inc.

ARBITRATORS' SIGNATURES



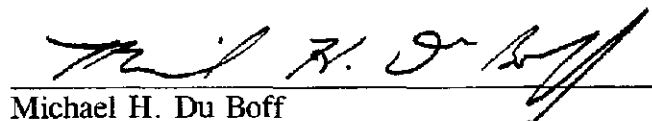
Michael H. Du Boff
Chairperson-Public Arbitrator

Peter Siebel, Jr.
Public Arbitrator

Robert A. Vaccaro
Industry Arbitrator

Date of Decision: January 15, 1998

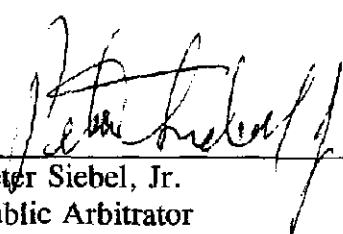
I, **Michael H. Du Boff**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein, and who executed this instrument which is my award.



Michael H. Du Boff

ARBITRATORS' SIGNATURES

Michael H. Du Boff
Chairperson-Public Arbitrator



Peter Siebel, Jr.
Public Arbitrator

Robert A. Vaccaro
Industry Arbitrator

Date of Decision: _____

I, Peter Siebel, Jr., 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.




Peter Siebel, Jr.

ARBITRATORS' SIGNATURES

Michael H. Du Boff
Chairperson-Public Arbitrator

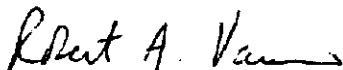
Peter Siebel, Jr.
Public Arbitrator



Robert A. Vaccaro
Industry Arbitrator

Date of Decision: January 15, 1998

I, **Robert A. Vaccaro**, 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.



Robert A. Vaccaro