

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Alvin W. Daughtridge

95-03260

Name of Respondents

Gruntal & Company
Nick Solomon

REPRESENTATION

Claimant, Alvin W. Daughtridge, appeared pro se.

For Respondents, Gruntal & Company and Nick Solomon, appeared Harry Frisch, Esq. in-house counsel with Gruntal & Company located in New York, New York.

CASE INFORMATION

Statement of Claim filed: July 30, 1995

Claimant's Submission Agreement signed on: June 29, 1995

Joint Statement of Answer filed by Respondents, Gruntal & Company and Nick Solomon, on: November 30, 1995

Respondent, Gruntal & Company's Submission Agreement signed on: November 30, 1995

Respondent, Nick Solomon's Submission Agreement signed on: December 23, 1995

HEARING INFORMATION

Hearing Date/Sessions: June 17, 1996 - 2 Sessions

Hearing Location: Hyatt Hotel
Charlotte, North Carolina

CASE SUMMARY

Claimant alleged that he owned shares of Medco Containment Services ("Medco") and was informed by Respondent, Gruntal & Company ("Gruntal"), that Merck & Co. ("Merck") and Medco were merging. As a result, Claimant alleged that he was given the option to accept either shares of Merck or cash on the tender offer by Merck.

Claimant alleged that on November 17, 1993, Respondent, Robert Solomon ("Solomon"), called and informed Claimant that Gruntal had not received his election as to whether he preferred Merck stock or cash; to which Claimant responded that he had answered and wanted Merck stock. Claimant further alleged that Solomon stated that Gruntal thought Merck would be relatively flat for several months; however, another stock, Purepac Inc. ("Purepac"), was poised for dramatic growth. Claimant alleged that he expressed some nervousness about the price earnings ratio, but finally agreed to sell Medco and buy 1000 shares of Purepac with a "stop loss" at \$20 per share.

Claimant alleged that Solomon quoted Medco's price at \$39 7/8; however, it had closed that day at \$40 per share. In addition, Claimant alleged that based on the price and commissions Solomon quoted; the sale of Medco would cover the purchase price of Purepac and that no additional money would be needed.

Claimant alleged that he received a statement for the purchase of Purepac for \$23,000.75, but not the statement did not reflect Medco's sale. Claimant alleged that he contacted Solomon on November 23, 1993, and objected to Purepac's price having changed from the price he was quoted and asked about Medco's sale; to which Solomon stated that he was unable to sell Medco because it had gone into the "pink sheets." Claimant further alleged that he was charged a commission of \$0.75 per share on Purepac until he objected, at which time Solomon agreed to lower the commission to \$0.50 per share. In addition, Claimant alleged that Solomon stated that Claimant had 607 shares of Merck on margin. Claimant further alleged that he told Solomon he did not want any stock on margin and alleged that Solomon promise to sell the Merck stock and only charge \$50 in commissions.

Claimant alleged that he received a letter dated December 2, 1993, warning him about Regulation T requirements, and that Solomon told him not to worry since the letter was just a formality. Further, Claimant alleged that his December statement showed the sale of Medco stock; however, not at the price he had been quoted in November. In addition, Claimant alleged that the "stop loss" order of \$20 per share was not exercised on Purepac. Claimant alleged that he contact Solomon who stated that a "stop loss" order could not be placed on Purepac since it was an over the counter stock.

Claimant alleged that in February 1994 he spoke with Gruntal's office manager, Allen Underberg ("Underberg"), and made his concerns known which was followed by a telephone conversation between Underberg, Claimant and Solomon. Claimant alleged that he was informed by Underberg the problems in his account were due to Claimant's failure to respond to the form concerning the choice of Merck stock or cash for Medco's stock. Claimant alleged that he assured them the he had replied, and Underberg stated that he would check with the company that handled the mailing. Claimant alleged that he called Gruntal and Underberg on numerous occasions and received the same answer each time, that Gruntal was still checking.

Respondents denied every accusation that they breached any duty owed to Claimant, that they engaged in wrongful conduct, or that they harmed the Claimant in any way. Respondents maintained that Claimant made or approved all decisions pertaining to the account at issue; that Claimant monitored the activity in his accounts and was aware of the nature of his investments at all times. Respondents maintained that Claimant opened his account on October 31, 1991 with Thomas Leahy ("Leahy"), and the New Account Form stated Claimant's investment objectives as growth, safety, and speculation; Claimant's net worth was listed as \$500,000 and approximate annual income was initially listed as

&250,000. In addition, Respondents maintained that Claimant signed a Gruntal Client Agreement which contained all provisions related to margin transactions, should margin transactions ever arise. Respondent maintained that Claimant was invited to comment on the information on his new account form, and he responded by noting his net worth as \$400,000 and annual income as \$100,000.

Respondents maintained that after Leahy, Thomas Cartney became Claimant's account executive in August 1992, and then Solomon in September 1993. Respondents maintained that during the week of November 8, 1993, Solomon called to inform Claimant that he had be assigned as Claimant's new account executive. In addition, Respondents maintained that Solomon recommended Claimant purchase Purepac and in response to the recommendation, Claimant requested Gruntal's reports on Purepac.

Respondents maintained that on November 17, 1993, Solomon was informed by Gruntal that no response was received from Claimant concerning the election to receive cash or Merck stock in exchange for his 500 shares of Medco. Respondent maintained that Solomon informed Claimant that he had missed the cut-off date for the tender of Medco and recommended selling it on the open market and buying 1000 share of Purepac. Respondents maintained that Claimant gave Solomon authorization to sell Medco and by Purepac at \$22 3/4 and that at no time did Claimant mention a "stop loss." Respondents further alleged that Solomon told Claimant that if Purepac lost anywhere between 10-15% of its value, he would contact Claimant.

Respondents stated that Solomon received a "nothing down" report on the sale of Medco since it was no longer trading on NASDAQ, a development of which, Solomon informed Claimant. Further, Respondents alleged that Solomon kept Claimant aware of the developments on Purepac for the next several days.

Respondents maintained that on November 24, 1993, Solomon called Claimant who requested that Solomon decrease his commissions on Purepac; and that Solomon accommodated him by reducing the commission by \$250. Respondents maintained Solomon contacted Claimant on November 30, 1993, and explained Purepac was trading in a range of 16 3/4 - 18 3/4, and that it was still an excellent growth opportunity.

Respondents also maintained that with Claimant's authorization Medco was sold for \$38 3/4 per share at a ticket price of \$50, which was \$787.00 short of the purchase price of Purepac. Respondent maintained that Solomon explained to Claimant that he could send in \$787.00 or place the trade on margin and that Claimant did not send the cash. Respondents denied that Solomon informed Claimant he was long 607 shares of Merck.

Respondents maintained that Claimants ratified the two disputed trades by failing to object after receipt of the confirmations and monthly statements and following conversations with Respondents. In addition, Respondents asserted that Claimant's losses were attributable to market conditions and his own investment decisions as an experienced investor.

In their counterclaim, Respondents alleged that Claimant had a remaining debit balance in his margin account of \$984.63.

RELIEF REQUESTED

Claimant requested damages in the amount of \$22,624.00, plus interest on that sum from November 17, 1993 to date.

Respondents requested that the Statement of Claimant be dismissed in its entirety, in addition to damages in the amount of \$984.63 on their counterclaim, plus costs and reasonable attorneys fees.

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 original remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Gruntal & Company and Nick Solomon, are jointly and severally liable, and shall pay to Claimant, Alvin Daughtridge, the sum of \$22,264.00, plus interest on that amount at the rate of 6% per annum, from November 17, 1993, to July 12, 1996;
2. Respondents' counterclaim is denied;
3. All cash and securities which remain in Claimant's account at Gruntal & Company shall become the property of Gruntal & Company; and,
4. All other requests for relief are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure, the following Forum Fees are assessed:

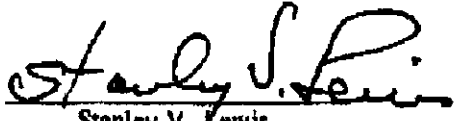
| | | |
|-------------------|----------|----------------------|
| Total Forum Fees: | \$600.00 | (2 Sessions x \$300) |
|-------------------|----------|----------------------|

1. Claimant, Alvin Daughtridge, is assessed the sum of \$300.00 representing one-half the total amount of forum fees assessed, less \$300.00 previously paid, leaving \$0.00 due.
2. Respondents, Gruntal & Company and Nick Solomon, are jointly and severally assessed the amount of \$300.00 representing one-half the total forum fees assessed. Therefore, Respondents, Gruntal & Company and Nick Solomon, are jointly and severally liable and shall pay to the NASD the sum of \$300.00.

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

ARBITRATOR'S SIGNATURE

- I, Stanley V. Lewis, do hereby affirm upon my oath as an arbitrator that I am the individual described herein and who executed this instrument, which is my award in this matter.


Stanley V. Lewis

Date of Decision: September 30, 1996