

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Richard E. Rice,
Claimant.

v.

No. 95-03494

Gruntal & Co., Inc., and
Peter Mark Bizinkauskas,
Respondents.

REPRESENTATION OF PARTIES

Richard E. Rice ("**Claimant**") was represented by Jane L. Stafford, Esq., of Watson & Marshall, L.C., Kansas City, Missouri.

Gruntal & Co., Inc. ("**GCI**") and Peter Mark Bizinkauskas ("**Bizinkauskas**") (collectively referred to as "**Respondents**") were represented by Harry D. Frisch, Esq., of Gruntal & Co., Inc., New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about July 19, 1995. Claimant's Submission Agreement was signed on July 14, 1995.

Respondents' Statement of Answer was filed on or about September 15, 1995. Respondents' Submission Agreements were signed on September 15, 1995, and September 5, 1995, respectively.

HEARING INFORMATION

A telephonic pre-hearing conference was held on February 9, 1996 for one (1) session.

The hearing was held on March 5, and 6, 1996 for two (2) sessions each day in Kansas City, Missouri for a total of four (4) sessions.

CASE SUMMARY

Claimant alleged that: Respondents made material misrepresentations and omissions about the nature and risk of the securities recommended; Respondents committed fraudulent activity in violation of §409.101 of the revised Missouri Statutes, 1986, as amended; Respondents violated §409.301 of the Revised Missouri Statutes, as amended through their sale of unregistered securities; Respondents violated §409.411 of the revised Missouri Statutes, as amended; Respondents violated the anti-fraud provisions of the Securities and Exchange Act of 1934, §10(b) and Rule 10(b)-5; Respondents violated NYSE Rule 405, and NASD Rules of Fair Practice, Article III, §2(a) through Respondents' recommendation and sale to Claimant of risky, speculative and unregistered securities; Respondents committed common law fraud; GCI negligently supervised Bizinkaukas; GCI is liable for the acts of Bizinkaukas under §20(a) of the Securities and Exchange act of 1934; Respondents committed general negligence; Respondents breached their fiduciary duty to the claimant; and GCI is liable for the acts of Bizinkaukas under the common law doctrines of agency and respondeat superior. The allegations arose out of transactions in the following securities: Cambridge Biotech Corp.; T*HQ; and Solv-Ex Corp. stock.

Respondent denied the allegations set forth in the Statement of Claim. Respondents also asserted the following affirmative defenses: The Claimant ratified and acquiesced in each and every trade of which he complains; the Claimant is not entitled to any measure of damages other than out-of-pocket losses and specifically is not entitled to special, exemplary or punitive damages or an award of attorney fees as a matter of law, and any award of punitive damages would violate the due process clause of the New York State Constitution; any losses sustained by Claimant are attributable to market conditions and to his own investment decisions, not to any action or inaction on the part of Respondents; Claimant's losses, if any, were proximately caused by his express and implied agreement to voluntarily assume the risk of the known peril of any losses sustained by his account; Claimant is an experienced investor and, at all relevant times, had or should have had full knowledge of all material facts concerning the investments he made, including the nature of the investments as well as the associated risks; Claimant directed and/or authorized the purchase of all investments in his account; the claims are barred by the principles of waiver, estoppel and ratification; GCI maintained a comprehensive system of supervision, properly implemented based upon the information available to GCI on new account documents and trading records; Claimant failed to mitigate damages; Claimant failed to state a claim for punitive damages; Claimant cannot recover damages for violations of NASD rules, if any, as no private right of action exists for such violations; Claimant's account was invested in accordance with his investment objectives; New York law governs this dispute, thus each of Claimant's non-New York law claims must fail; and if Claimant has transferred any of the investments complained of from Gruntal, and has chosen to retain investments in his portfolio that were purchased after that point, Claimant has made a second investment decision, and as a result, is estopped from seeking any recovery from GCI for any further diminution of value of those transferred investments.

RELIEF REQUESTED

Claimant requested an award against the Respondents, jointly and severally, as follows: For an award of compensatory damages in the amount of \$29,891.07; interest on all damages awarded as allowed by statute; reasonable attorneys' fees; costs, disbursements and expenses; punitive damages as the arbitration panel deemed fair and just as a deterrent and punishment; and for such other relief as deemed just and equitable.

Respondents requested that the claims asserted against them be dismissed in their entirety and that all costs associated with this arbitration proceeding be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

On or about September 15, 1995, Respondents filed a Motion to dismiss the statement of Claim. After consideration of the pleadings, and the parties' responses, the arbitrators denied the motion.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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:

Claimants claims asserted against the Respondents are, and each of them, denied with prejudice.

Each party shall bear its own costs and expenses associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were four (4) regular sessions x \$400 and one (1) pre-hearing session x \$300 = \$1,900 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), 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 Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$100 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD by the Claimant.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$200 previously paid by GCI.

— Additional forum fees in the amount of \$950 are assessed against the Respondents.

Additional forum fees in the amount of \$550 are assessed against the Claimant.

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

Dated:

Robert G. Scott
Robert G. Scott
Public Arbitrator, Presiding Chair

s/s

April 3, 1996

James J. Danda
James J. Danda
Public Arbitrator

s/s

April 3, 1996

David K. Richards
David K. Richards
Industry Arbitrator

s/s

April 2, 1996