

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Adam Stolpen  
Carolyn Wigder

95-03945

Name of Respondents

Gruntal & Co., Inc.  
Morgan Stanley & Co., Inc.  
Dunhill Equities Inc.  
Andre Lopoukhine

REPRESENTATION

For Claimant Adam Stolpen and Carolyn Wigder (collectively "Claimants") appeared Edward G. Werner, Esq., of Kalmus & Martuscello, located in New York, New York.

For Respondent Gruntal & Co., Inc. ("Respondent") appeared Donald N. Cohen, Esq. in house counsel at Gruntal & Co., located in New York, New York.

For Respondent Morgan Stanley & Co., Inc. ("Respondent") appeared Judith Welcom, Esq., of Brown and Wood, located in New York, New York.

Respondent Andre Lopoukhine ("Respondent") appeared pro se.

CASE INFORMATION

A joint Statement of Claim was filed on August 16, 1995. Claimant Wigder's Submission Agreement was signed on August 2, 1995. Claimant Stolpen's Submission Agreement was signed on August 3, 1995.

A Statement of Answer was filed by Respondent Gruntal & Co. Inc., on November 24, 1995. Respondent Gruntal & Co. Inc.'s Submission Agreement was signed on November 6, 1995.

A Statement of Answer was filed by Respondent Andre Lopoukhine on November 7, 1995.

Respondent Andre Lopoukhine failed to sign a Submission Agreement.

A Statement of Answer was filed by Respondent Morgan Stanely & Co., Inc., on October 31, 1995. Respondent Morgan Stanely & Co. Inc.'s Submission Agreement was signed on October 27, 1995.

### HEARING INFORMATION

Hearing Dates/Sessions:	June 24, 1996	-	Two Sessions
	June 25, 1996	-	Two Sessions

The hearings were held at the offices of the National Association of Securities Dealers, Inc. located in New York, New York.

### CASE SUMMARY

Claimants alleged that on or about December 1993, Claimant Adam Stolpen ("Stolpen") met Andre Lopoukhine ("Lopoukhine") who stated that if Stolpen opened an account with him he would provide Stolpen with information that would assure profitability. Claimant further alleged that Lopoukhine repeatedly emphasized his connection with Morgan Stanely & Co. ("Morgan Stanely") and not Dunhill Equities, Inc. ("Dunhill"), and that based on these representations, Stolpen opened an account with Lopoukhine in December 1993. Claimants also alleged that Claimant Carolyn Wigder ("Wigder"), shortly thereafter, was introduced to Lopoukhine and that after listening to the same representations, she too opened an account with Lopoukhine. Claimants alleged that they both thought that they were opening accounts with Morgan Stanely and not Dunhill.

Claimant Wigder stated she told Lopoukhine that she did not wish to trade on margin, and she did not want to take any risks with her account, and that Lopoukhine deceitfully represented to her, as he had done to Stolpen, that in order to open the account she must sign a margin agreement although he would not be executing margin trades without specific approval. Claimants further asserted that Respondents engaged in fraudulent conduct and violated duties Respondents owed to them by inducing and directing excessive trading and engaging in unauthorized trading. Claimants also asserted that Respondents failed to provide them with competent professional services and thereby breached their contractual and legal duties.

Claimants asserted that Respondent Lopoukhine churned their accounts, failed to follow their instructions and induced Stolpen to loan him \$20,000. Claimants further asserted that Lopoukhine induced them to buy Clean Harbors, Inc. and Focus Enhancements which resulted in a loss for Wigder and a minimal profit for Stolpen but which, claimants argued generated commissions for Lopoukhine. With respect to the purchases of Morgan Stanley Africa Fund, claimants asserted they objected to the purchase, but after relentless pressure from Lopoukhine, Wigder consented to purchase it based on his representation that she could cancel it in one month. Claimants further asserted that Lopoukhine not only pressured the sale but also

purchased more than he was authorized to and made the purchases on margin when they had not consented to having the accounts on margin.

Claimants contended that Lopoukhine failed to execute orders they placed when he expressed to them he had executed their instructions. Stolpen further contended that Lopoukhine said he would not give him investment advice unless he loaned him money. Claimants stated that they transferred their accounts to Gruntal when Lopoukhine started working there on his assurances that they would recoup their losses. Wigder stated Lopoukhine told her she had approximately \$26,000 in her account and she requested a transfer of a portion of that to another account. She stated further that Lopoukhine margined the securities to free up money in her account since the account did not have that much money. Wigder stated she instructed him against this type of trading but that he executed these trades anyway. Wigder claimed these trades were not only unauthorized but that the margin agreement was forged.

Claimants contended that Lopoukhine violated duties he owed to them by misrepresenting investments and recommending unsuitable investments. Claimants further contended that Dunhill and Gruntal failed to reasonably supervise Lopoukhine in connection with his dealings with Claimants and thereby breached their contractual and legal duties to them.

Respondent Gruntal maintained that most of the activity complained of occurred at a time before Claimants opened their accounts with Gruntal and therefore, Gruntal cannot be liable for any actions that occurred during that time.

Respondent Gruntal maintained that Claimants relationship with account executive, Lopoukhine, preceded the opening of their Gruntal accounts, and that apparently they were well satisfied with Lopoukhine's handling of the Dunhill account, because they transferred their respective accounts to Gruntal when Lopoukhine joined Gruntal. Respondent Gruntal further maintained that Claimants both opened their Gruntal accounts in April, 1994 and that the New Account Form reflected that Stolpen had an approximate net worth of \$1 million and an approximate annual income of \$180,000.00, that Wigder had an approximate net worth of \$300,00.00 and an approximate annual income of \$40,000.00, that Claimants' investment objectives were growth and speculation, and that they both had extensive prior experience in trading in securities and options. Respondent Gruntal contended that each Claimant signed the Options Account Information Form and the Customer Options Agreement both of which stated in boldface capital letters that they had read and received the information and that the option transactions involve a high degree of risk and may be considered a speculative practice. Furthermore, Respondent Gruntal contended that Wigder's allegation that her signature on the Options Account Information form was forged is false.

Respondent Gruntal further contended that after opening his Gruntal account, Stolpen transferred two securities and that Wigder transferred five securities to their respective accounts. Claimants contended that although Stolpen has alleged that his account was churned and that excessive trading occurred, only one position was opened while at Gruntal: on June 3, 1994, Stolpen sold 50 calls on Standard Microsystems July 17 at a price of \$1.375 for \$6,697.76. Respondent

Gruntal also contended that Stolpen made a profit of \$3,978.27 on the only position that was both bought and sold at Gruntal. Respondent Gruntal maintained that all three transactions which occurred at Gruntal, the opening and closing of the Standard Microsystems option position and the sale of the Parallax Computer shares, were undertaken only after Lopoukhine had discussed them with Stolpen and only after each transaction was authorized by Stolpen. Respondents further maintained that similarly, all of the transactions in Wigder's account which occurred at Gruntal were undertaken only after Lopoukhine had discussed them with Wigder and only after each transaction was authorized by her, and furthermore, each transaction was suitable for Wigder in light of her investment objectives, investment experience, and financial position.

Respondent Gruntal contended that Wigder's allegation that in August 1994 her account was "transferred to another brokerage firm", is false and that in fact, Wigder transferred her account to another Gruntal account executive, Richard Stein ("Stein"), located in Gruntal's New Haven office. Respondent Gruntal further contended that Claimants failed to exercise reasonable or ordinary care, caution or prudence with respect to the matters alleged in the Statement of Claim.

Respondent Lopoukhine maintained that when he met Stolpen at a conference in New York on small cap stocks, Stolpen portrayed himself as having years of investment experience, and that according to Stolpen's account form at Dunhill, he had 25, years experience. Respondent

Lopoukhine further maintained that Stolpen was told very clearly that he worked for Dunhill and that Dunhill cleared through Morgan Stanley. Furthermore, Respondent stated that Stolpen had received correspondence from him on Dunhill stationery many times.

Respondent Lopoukhine also maintained that Stolpen made \$54,671.00 at Dunhill, and that his allegations that Lopoukhine began to churn, execute unauthorized trades, and charge exorbitant commissions were false. Respondent Lopoukhine further maintained that he and Stolpen were involved in many other business ventures besides the stock market and that Lopoukhine, in being what he perceived as friends, asked Stolpen for a short term \$20,000.00 loan, which he collateralized with a \$40,000.00 A.B. Durand painting, and that this loan had nothing to do with Stolpen's account nor was there ever any threats not to make money back in PLLN.

Respondent Lopoukhine maintained that upon his joining Gruntal in April, 1994, Stolpen was eager to transfer his account to Gruntal. Respondent Lopoukhine contended that the only trades in this account were on June 2, where he wrote 50 calls on a long position of Standard Microsystems and bought them back at 1/2 on June 17 for a profit of \$4,000.00 and that Stolpen was sent the option papers, which he promptly signed and sent back. Respondent Lopoukhine further contended that in June, 1994 Stolpen wanted Respondent to send Stolpen \$7,000.00 out of his account, and that when Stolpen received the check, he was irritated that "he was borrowing money from his own account", and he asked that the check be canceled.

Respondent Lopoukhine maintained that Stolpen introduced him to Wigder, who wanted to start doing business with him because of Stolpen's success both at Dunhill and with Morgan Stanley Asia Fund. Respondent Lopoukhine further maintained that Wigder opened her account with

\$45,000.00 and that she indicated that she wanted Respondent to replicate Stolpen's trades, however, Respondent explained to her that Stolpen's account was larger and it was not possible to purchase as many shares at a time. Respondent Lopoukhine also contended that he explained to Wigder that by using margin, she would be able to purchase larger positions, and that she said she wanted to trade like Stolpen and signed the proper margin papers. Respondent Lopoukhine maintained that Wigder indicated to him that she had five years of prior investment experience and that all transactions with Wigder were done with her approval.

Respondent Morgan Stanely maintained that they acted solely as a clearing broker for Claimants' accounts while those accounts were at Dunhill and, as such, performed only limited, ministerial services. Respondent Morgan Stanely further maintained that Claimants were fully aware of the respective functions of Dunhill and Morgan Stanely in servicing their accounts, and that at the time Claimants opened their accounts with Dunhill, they were given a disclosure document entitled "Rule 382 Letter", which informed them about the allocation of responsibilities between Morgan Stanely and Dunhill. Respondent Morgan Stanely also maintained that the Rule 382 Letter also provides that unless notified in writing by the customer to the contrary, Morgan Stanely may accept instructions for the customer's account from the introducing broker without investigating or inquiring as to such instructions.

Respondent Morgan Stanely contended that the allegation that Claimants believed that they were opening accounts with Morgan Stanely and not Dunhill and that Morgan Stanely violated standards of conduct to which it was obligated clearly fly in the face of all account documentation executed by or on behalf of Claimants in connection with the opening of their accounts.

### **RELIEF REQUESTED**

Claimant requested:

1. Actual damages to compensate the Claimants for all costs incurred for commissions, all losses incurred on their investments, and to put them in the financial position they would be in if their accounts had been properly handled.
2. Punitive damages in a sum to be determined by the panelists; such damages being awarded to punish Respondents for their wrongful conduct and to deter Respondents from engaging in such conduct in the future;
3. For all of the Claimants' costs, expenses and disbursements including reasonable attorneys' fees in pursuing this arbitration proceeding;
4. For such other relief as the arbitration panel deems just and proper.

Respondent Gruntal requested that all claims against it be dismissed in their entirety.

Respondent Lopoukhine requested that all of the claims against him be dismissed in their entirety.

Respondent Morgan Stanley filed a motion to dismiss the claims against it in the Statement of Claim.

### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Morgan Stanley & Co.'s Motion to Dismiss was granted by the arbitration panel on June 17, 1996.

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 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 claims set forth by Claimants are hereby denied.
2. The motion to dismiss by Gruntal is hereby granted.
3. All other claims are denied.
4. Each party shall bear its own cost, including attorney's fees.

### **ARBITRATORS' REPORT**

#### **FACTUAL BACKGROUND AND STATEMENT OF REASONS**

In December 1993, Claimant Adam Stolpen ("Stolpen") opened a margin account with a relatively small portion of his net worth with respondent Dunhill Equities, Inc. ("Dunhill") through its account executive, respondent Andre Lopoukhine ("Lopoukhine"). Stolpen, a real estate developer and graduate of Georgetown Law School, had over 20 years prior experienced investing and trading in securities. Prior to commencing his customer relationship with Lopoukhine, Stolpen and Lopoukhine had a personal relationship, primarily relating to their mutual interest in collecting and dealing in art works, particularly paintings. Shortly after becoming a customer of Lopoukhine, Stolpen recommended Lopoukhine as a broker to his long-time family friend, Carolyn Wigder ("Wigder"), who is also a claimant herein.

In July 1994, Wigder opened a margin account at Dunhill with a small portion of her net worth and told Lopoukhine that she would like to trade her account by mirroring the transactions being made in Stolpen's account (albeit on a smaller scale, commensurate with the smaller size of her account). Although Wigder is a well educated and intelligent high school science teacher who had prior experience investing in securities, she was not as experienced as Stolpen in trading securities.

In April 1994, being happy with the way Lopoukhine was handling their accounts at Dunhill, Stolpen and Wigder transferred their accounts to respondent Gruntal & Co., Inc. ("Gruntal") when Lopoukhine left Dunhill to become an employee of Gruntal. In addition to opening margin accounts at Gruntal, claimants opened options accounts, and indicated their investment objectives as being growth and speculation. Nevertheless, the only options sold in claimants' accounts were "covered" calls against long positions.

In addition to naming Lopoukhine, Dunhill and Gruntal as respondents, claimants asserted their claims against Morgan Stanley and Co. ("Morgan") even though Morgan had no relationship with claimants other than as the clearing broker for Dunhill. Stolpen claimed that he named Morgan as a respondent because he believed that Lopoukhine was employed by Morgan rather than by Dunhill even though he (as well as Wigder) received all of the disclosures documents making it clear that (a) Morgan had no responsibility with respect to the supervision of the accounts which they opened at Dunhill; (b) Dunhill was not an affiliate of Morgan and (c) Morgan had no responsibility for the conduct of the brokers employed at Dunhill. We granted Morgan's motion to dismiss the claims prior to the arbitration hearing on the ground that the claims against it were totally without merit and lacked any basis in fact or law.

Shortly before Lopoukhine moved to Gruntal, he asked Stolpen to loan him \$20,000 as a short term personal loan, which Stolpen did in consideration of Lopoukhine pledging a \$40,000 painting as collateral and signing a promissory note and security agreement. The note, which matured one month after the date of the loan, required an interest payment of \$2,000 in addition to the repayment of the \$20,000 principal amount. The note also provided that, if the \$2,000 interest amount could subject the payee "to either civil or criminal liability" for usury, the interest rate would be reduced to "the maximum rate permitted by applicable law." However, the note did not provide for such a reduction of interest if the \$2,000 interest payment merely constituted a defense to an obligation to repay the loan (as opposed to civil or criminal liability). Thus, it was possible that any attempt by Stolpen to collect on the note in a court of law would be subject to a usury defense.

In addition to asserting claims against Lopoukhine and the other respondents for actual and punitive damages by reason of Lopoukhine's recommending unsuitable transactions, effecting unauthorized transactions, churning the accounts and charging excessive commissions, Stolpen alleged in his statement of claim that respondents stole his funds and that Lopoukhine coerced him into making the aforesaid \$20,000 personal loan by threatening (a) to discontinue being his broker if he did not make the requested loan and (b) to refrain from fulfilling the promise which Lopoukhine allegedly made to Stolpen guaranteeing that Stolpen would make a profit on certain

trades. Not only did the evidence fail to support any of the claims asserted by Stolpen and Wigder in this arbitration proceeding, but several of the specific allegations made by Stolpen in his statement of claim lacked credibility or were clearly contradicted by documentary evidence.

Based on the foregoing and the evidence and testimony produced at the hearing, we find that the claims of Stolpen and Wigder are totally without merit. Moreover, because we find that Stolpen was the moving force behind the commencement of this arbitration proceeding and that he attempted to use the arbitration process to assert his claim against Lopoukhine for the repayment of a personal loan, which was unrelated to his brokerage relationship with Lopoukhine and thus outside the scope of the arbitration agreement, we have assessed all administrative costs of this proceeding against Stolpen.

#### FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators have determined that the NASD shall retain the \$ 200.00 non-refundable filing fee previously deposited by Claimant and have assessed the following forum fees:

4 Sessions x \$750.00	= \$3,000.00
minus claimants' hearing session deposit	-\$ 750.00
Total outstanding	= \$2,250.00

The arbitrators have determined that Claimant Stolpen shall be and is liable for the outstanding forum fees. Therefore Claimant Stolpen is liable and shall pay to the NASD the sum of \$2250.00 which represents the total outstanding forum fees.

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



**ARBITRATORS' SIGNATURES**



Clifford A. Harwick  
Industry Arbitrator

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Barry A. Mahler, Esq.  
Public Arbitrator

Date of Decision: September 19, 1996

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Stephen A. Hochman, Esq.  
Public Chairperson

I, Stephen A. Hochman, Esq., 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.

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Stephen A. Hochman, Esq.

ARBITRATORS' SIGNATURES


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Clifford A. Harwick  
Industry Arbitrator

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Barry A. Mahler, Esq.  
Public Arbitrator


Date of Decision: September 19, 1996



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Clifford A. Harwick  
Industry Arbitrator



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Barry A. Mahler, Esq.  
Public Arbitrator

Date of Decision: September 19, 1996

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Public Chairperson

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Stephen A. Hochman, Esq.


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I, Barry A. Mahler, Esq., 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.

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Barry A. Mahler, Esq.

I, Clifford A. Harwick, 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.



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Clifford A. Harwick

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Award 95-03945

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