

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Precision Associates, Inc.

and

95-05884

Name of Respondent

Gruntal & Co., Inc.  
Darwin Martinez

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### **REPRESENTATION OF PARTIES**

Precision Associates, Inc. ("**Claimant**") was represented by Sidney J. Spaeth, Esq., Faegre & Benson, P.L.L.P., Minneapolis, Minnesota.

Gruntal & Co., Inc. ("**Respondent Gruntal**") and Darwin Martinez ("**Respondent Martinez**") were represented by Harry D. Frisch, Esq., Gruntal & Co., Inc., New York, New York.

### **CASE INFORMATION**

The Statement of Claim was filed on or about December 18, 1995. Submission Agreement of Claimant Precision Associates, Inc. was signed on December 13, 1995 by Arnold E. Kadue.

Statement of Answer was filed by Respondent Gruntal & Co., Inc. on or about March 26, 1996. Supplement to Statement of Answer was dated March 29, 1996. Submission Agreement of Respondent Gruntal & Co., Inc. was signed on May 8, 1996 by John Cirrito.

In a letter dated July 19, 1996 Respondent Darwin Martinez adopted as his Answer the Answer previously submitted by Respondent Gruntal.

### **HEARING INFORMATION**

A pre-hearing conference was held on Thursday, December 5, 1996 for one (1) session. The hearing was held on Tuesday, January 21, 1997 for two (2) sessions in Minneapolis, Minnesota for a total of one (1) pre-hearing and two (2) hearing sessions.

### **CASE SUMMARY**

Claimant, through Arnold Kadue, alleged that in December, 1994, Respondents defied his explicit instructions and piggy-backed an unauthorized purchase of stock onto an authorized purchase of stock. Specifically, Claimant alleged that:

- ▶ Upon the solicitation of Respondent Martinez, Claimant authorized the sale of Quantum stock and the purchase of 6,000 shares of Flagstar.
- ▶ Respondent Martinez was given specific instructions to forward the balance of the Quantum sale proceeds to the Claimant.
- ▶ Respondent Martinez did not forward the balance of the Quantum sale proceeds as instructed but instead used them to purchase additional shares of Flagstar.
- ▶ Respondent Martinez purchased a total of 12,000 shares of Flagstar using the total proceeds from the Quantum sale and margin.
- ▶ Upon discovering the unauthorized purchase, Claimant made numerous attempts to contact Respondents to notify them of the disputed trade.

Claimant stated that the actions of Respondents constituted violations of the federal and state securities laws; breach of fiduciary duty; and common law fraud. In addition, Claimant alleged that Respondent Gruntal failed to properly supervise Respondent Martinez.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that all investment decisions were made by the Claimant and Respondents never controlled Claimant or its assets. In addition, Respondents stated that immediately upon Claimant's authorization and approval in advance of each and every transaction, Respondent Gruntal sent written confirmation describing the details of each transaction. Respondents further stated that Claimant never expressed any dissatisfaction, displeasure or complained of any of the transactions executed until, specifically, April 13, 1995 regarding the alleged unauthorized purchase of Flagstar. Respondents asserted numerous affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested an award of compensatory damages in an amount to be proven at hearing but valued at the time of filing at an estimated \$42,281.67; interest; costs; attorneys' fees pursuant to Minn. Stat. §80A.23; and for such other and further relief as the arbitration panel deems just and equitable.

Respondents requested that the Statement of Claim be dismissed in its entirety and that any and all costs associated with this proceeding be assessed against the Claimant.

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

Respondent Darwin Martinez did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Claimant asserted a Motion to Preclude Respondent Martinez from presenting any defenses, testimony and evidence at the hearing. After considering the submissions of the parties and the arguments presented on behalf of the parties, the undersigned arbitrators have decided to **deny** the motion.

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(s) remain on file with the NASD REGULATION, Inc. Office of Dispute Resolution.

### **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. Respondents Gruntal & Company, Inc. and Darwin Martinez shall be and hereby are jointly and severally liable for and shall pay to the Claimant Precision Associates, Inc. the sum of \$23,361 (**twenty three thousand three hundred sixty one dollars**) as compensatory damages.
2. Respondents Gruntal & Company, Inc. and Darwin Martinez shall be and hereby are jointly and severally liable for and shall pay to the Claimant Precision Associates, Inc. the sum of \$10,458 (**ten thousand four hundred fifty eight dollars**) as attorneys' fees.
3. Each party shall bear its own costs, expenses and fees, including attorneys' fees incurred in this matter not specifically enumerated herein.

### **FORUM FEES**

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$300 and were two (2) sessions x \$400 = \$1,100 in

forum fees. Pursuant to §10332(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 §10332(c) of the NASD Code of Arbitration Procedure, the NASD REGULATION, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$120 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD REGULATION, Inc. Office of Dispute Resolution by the Claimant Precision Associates, Inc. Respondent Gruntal & Company, Inc. shall be and hereby is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$700 as the balance due for forum fees.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, the NASD REGULATION, Inc. Office of Dispute Resolution shall **assess** the non-refundable member surcharge in the amount of \$200 against Respondent Gruntal & Co., Inc. **Fees are payable to the NASD REGULATION, Inc. Office of Dispute Resolution.**

Dated:

/s/ Casandra Mihalchick, Esq.  
Casandra Mihalchick, Esq.  
Public Arbitrator, Presiding Chair

February 7, 1997

/s/ Kevin D. Hofman, Esq.  
Kevin D. Hofman, Esq.  
Public Arbitrator

February 5, 1997

/s/ Lee T. Beske  
Lee T. Beske  
Industry Arbitrator

February 6, 1997