

N.A.S.D. AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Margie Kolos

96-01240

Name of Respondent(s)

Gruntal & Co., Inc.
David M. Newman

REPRESENTATION

Claimant Margie Kolos ("Kolos") was pro se.

For Respondents Gruntal & Co., Inc. ("Gruntal") and David M. Newman ("Newman"): Scott Diamond, Esq. of Morgan, Lewis & Bockius, Miami, Fl.

CASE INFORMATION

Statement of Claim filed: March 20, 1996. Claimant's Submission Agreement signed on: March 15, 1996.

Joint Statement of Answer filed by Respondents on: May 31, 1996. Respondent Gruntal's Submission Agreement signed on: June 10, 1996 by John Cirrito on behalf of Gruntal. Respondent Newman's Submission Agreement signed on: June 21, 1996.

HEARING INFORMATION

On December 17, 1996 in Ft. Lauderdale, Florida a hearing lasting two sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondents were liable to the Claimant as a result of recommending unsuitable investments; making misstatements and omissions to Claimant; and, breaching the fiduciary duty owed to Claimant. Claimant alleged that she was not familiar with the investment market and relied upon Newman's expertise and experience to make investment choices.

Claimant alleged that she was advised to purchase certain stocks which she alleges were unsuitable for her and which resulted in substantial losses. Claimant alleged that the commissions charged exceeded the small profits she made from the sale of some stocks and maintained that Newman's only concern was to generate commissions for himself.

Respondents denied all allegations of wrongdoing and alleged the following: Claimant was a sophisticated investor; all purchases and sales in Claimant's account were suitable for Claimant; Claimant told Newman that she wanted to be more aggressive with her investing and that Claimant said that she understood the risks involved in such investing. Respondents next maintained that Kolos had a habit of selling the stocks recommended by Newman if their value declined after she purchased them. Respondents maintained that, of the eight trades outlined in the Statement of Claim, seven were sold by Claimant against Newman's advice. Respondents alleged that four of those investments increased in value after she sold them.

Respondents asserted affirmative defenses including, but not limited to: ratification; any losses were attributable to market conditions; assumption of risk; waiver; estoppel; failure to mitigate damages; and, there is no private right of action for violation of self-regulatory organization rules.

RELIEF REQUESTED

Claimant requested damages in the amount of \$10,893.00 plus lost interest in the amount of \$2,614.00 plus a return of her filing fees and expenses and such other relief as the panel deemed appropriate.

Respondents requested dismissal of the claim plus costs.

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 are found not liable and, therefore, all claims are hereby dismissed.
2. Claimant's request for return of filing fees and expenses is hereby denied.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Code of Arbitration Procedure (formally Section 43(c)) the arbitrator has assessed forum fees in the amount of \$600.00 (two sessions x \$300.00 per session).

1. Claimant is hereby assessed forum fees in the amount of \$600.00, for which the NASD shall retain the \$300.00 previously deposited by Claimant in partial satisfaction of such fees, leaving a balance due to the NASD of \$300.00.

2. The NASD shall retain the \$100.00 non-refundable filing fee previously paid by Claimant.

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

Arbitrator's Signature
Name

Public/Industry

/s/
John B. Kelley, Esq.

Public/Chairman

Date of Decision: January 13, 1997