

N.A.S.D. AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

William Jaseph

96-02802

Name of Respondent

Gruntal & Co., Inc.
Brock A. Malky

REPRESENTATION

Claimant William Jaseph ("Claimant") was represented by John P. Connolly, Esq., Alexandria, VA 22314.

Respondent Gruntal & Co., Inc. ("Gruntal") was represented by Emilia M. DeMeo, Esq., Gruntal & Co., Inc., New York, NY.

Respondent Brock A. Malky ("Malky") was represented by Walter L. Baumgardner, Esq., Musilli, Baumgardner, Wagner & Parnell, St. Clair Shores, MI.

CASE INFORMATION

The Statement of claim was filed June 28, 1996.

Claimant's Uniform submission agreement was signed June 14, 1996.

Gruntal's Statement of Answer was filed September 11, 1996.

Gruntal's Uniform Submission Agreement was signed October 21, 1996.

Malky's Statement of Answer was filed August 20, 1996.

Malky did not submit an executed agreement to arbitrate.

HEARING INFORMATION

Prehearing Conference Date/Sessions: May 23, 1997/one session

Hearing Dates/Sessions: July 30, 1997/one session
July 31, 1997/two sessions
August 1, 1997/two sessions
January 13, 1998/two sessions
January 14, 1998/two sessions
January 15, 1998/three sessions

Hearing Location: NASD Headquarters
Washington, D.C.

CASE SUMMARY

Claimant alleged that Gruntal and Malky (collectively "Respondents") committed fraud upon the Claimant through misrepresentations and omissions of material facts in connection with a securities and options account. Claimant alleged that these actions constituted the following: (1) breach of contract; (2) common law fraud and deceit; (3) violation of NASD Rules of Fair Practice; and (4) a violation of Section 11-703 of the Code of Maryland. Claimant alleged that he relied to his detriment on Malky's false statements and omissions in connection with the purchase of securities in his account including transactions in Reddi Brake Supply Corp. and Fore Systems, Inc. Claimant asserted that Gruntal failed to properly supervise Malky and that Claimant suffered damages as a direct result of these acts and omissions.

Respondent Gruntal denied the allegations asserted by Claimant in the Statement of Claim. Gruntal maintained that no fraudulent misrepresentations were made to Claimant by Respondents or anyone else at Gruntal, nor did Claimant rely on any alleged misrepresentations in making his investment decisions. Gruntal contended all of the transactions in Claimant's account were suitable for Claimant's stated investment objectives of growth and speculation. Gruntal further asserted that Claimant was an experienced and knowledgeable investor who traded speculative securities and options on an unsolicited basis and on margin, both prior to and at the time he opened his Gruntal account. Gruntal maintained that Claimant's account was not excessively traded, that Claimant received commission discounts at Gruntal, and that Claimant was, at all times, in complete control of his account.

Gruntal maintained that Malky was properly supervised at all times and that Gruntal contacted Claimant in writing on two occasions regarding his account activity but Claimant did not report any alleged wrongdoing by Malky to Gruntal. In fact, Gruntal contended that both letters informed Claimant that the activity in his account was both solicited and unsolicited and in accordance with his investment objectives. In addition, Malky's supervisor at Gruntal telephoned Claimant and cautioned Claimant about the speculative nature of his investments at Gruntal. Gruntal also asserted that Claimant had several opportunities to sell his positions at a profit and yet he completely failed to mitigate or avoid his alleged losses. Gruntal maintained that Claimant's claim under the Maryland securities statute is barred by the one-year statute of limitations and his claims for punitive damages and attorney's fees have no factual or legal basis.

Malky denied claims of wrong-doing as alleged by Claimant and maintained that Claimant was an educated and experienced investor. Malky asserted that at no time did Claimant inform him that Claimant had limited investment capital or that he had not invested in over one year. In addition, Malky maintained that Claimant never informed him that his investment goals were to be a conservative long term investor. Malky maintained that he never guaranteed Reddi Brake stock nor did he use high pressure tactics to sell Reddi Brake to Claimant. Malky maintained that Claimant stated, in writing, that his liquid net worth was \$500,000.00 and that he had eight years of experience in stocks and bonds, thus making Claimant suitable for the recommended investments.

Malky denied that he represented to Claimant that he possessed insider information or that he ever guaranteed a drop in price of Fore Systems. In addition, Malky maintained that all orders to purchase options in Fore Systems were placed by Claimant. Malky maintained that he did not make misrepresentations or omit material information to Claimant, nor did he defraud Claimant in any other fashion. Malky maintained that any losses suffered by Claimant were the result of Claimant's own investment decisions.

RELIEF REQUESTED

Claimant requested an award against Respondents, jointly and severally in the amount of \$208,000.00; lost investment opportunity of \$75,000.00; pre-award interest; punitive damages of \$150,000.00, and the costs and fees of \$50,000.00 including an award of attorney's fees pursuant to the Maryland Securities Act.

Gruntal requested that Claimant's Statement of Claim be denied in its entirety and that all costs and fees be assessed to Claimant.

Malky requested that the claims be denied and that Claimant be assessed all costs including legal fees incurred by Malky.

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 originals remain on file with the NASD.

Respondent Malky 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 Rule 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.

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. That the Statement of Claim is denied; and
2. That the claim for punitive damages is denied; and
3. That each party shall bear its own costs and expenses including attorney's fees; and
4. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code the NASD Regulation will retain the \$350.00 member surcharge deposited by Respondent Gruntal and Co., Inc.

FORUM FEES

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

1 Prehearing Session = \$ 300.00

12 Hearing sessions x \$750.00 = \$9,000.00

Total Forum Fees = \$9,300.00

Forum Fees are assessed to Claimant at \$4,650.00 and to Respondents Gruntal and Malky, jointly and severally, at \$4,650.00.

Claimant shall receive credit for the \$750.00 Hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$3,900.00.

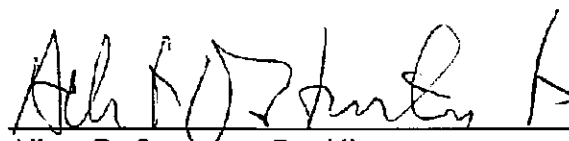
Respondents are jointly and severally assessed Forum Fees of \$4,650.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

DATE

2/5/98

CONCURRING ARBITRATORS' SIGNATURES



Albert D. Sturtevant, Presiding
Public Arbitrator

Elaine A. Sehart-Green
Public Arbitrator

Ida C. Draim
Industry Arbitrator

Date Decision Served by NASD Regulation:

February 18, 1998

FORUM FEES

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

1 Prehearing Session = \$ 300.00

12 Hearing sessions x \$750.00 = \$9,000.00

Total Forum Fees = \$9,300.00

Forum Fees are assessed to Claimant at \$4,650.00 and to Respondents Gruntal and Malky, jointly and severally, at \$4,650.00.

Claimant shall receive credit for the \$750.00 Hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$3,900.00.

Respondents are jointly and severally assessed Forum Fees of \$4,650.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

DATE

CONCURRING ARBITRATORS' SIGNATURES

February 5, 1998

Albert D. Sturtevant, Presiding
Public Arbitrator

Elaine A. Sehart-Green
Elaine A. Sehart-Green
Public Arbitrator

Ida C. Draim
Industry Arbitrator

Date Decision Served by NASD Regulation:

February 18, 1998

FORUM FEES

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

1 Prehearing Session = \$ 300.00

12 Hearing sessions x \$750.00 = \$9,000.00

Total Forum Fees = \$9,300.00

Forum Fees are assessed to Claimant at \$4,650.00 and to Respondents Gruntal and Malky, jointly and severally, at \$4,650.00.

Claimant shall receive credit for the \$750.00 Hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$3,900.00.

Respondents are jointly and severally assessed Forum Fees of \$4,650.00.

Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution

DATE

CONCURRING ARBITRATORS' SIGNATURES

Albert D. Sturtevant, Presiding
Public Arbitrator

Elaine A. Sehart-Green
Public Arbitrator

2/09/98

Ida C. Draim
Ida C. Draim
Industry Arbitrator

Date Decision Served by NASD Regulation:

February 18, 1998