

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Maria E. Myers

vs.

Case No. 99-00243

Name of Respondents

Gruntal & Co., L.L.C.
Kenneth (aka Troy) Lowman

REPRESENTATION OF PARTIES

Claimant, Maria E. Myers, hereinafter referred to as "Claimant": Daniel J. Dugan, Esq., Spector Gadon & Rosen, Philadelphia, Pennsylvania

Respondents, Gruntal & Co., ("Gruntal") and Kenneth (aka Troy) Lowman ("Lowman"), hereinafter collectively referred to as "Respondents": Peter Vaughan, Esq., Gruntal & Co., New York, New York

CASE INFORMATION

Statement of Claim filed on or about: January 19, 1999
Claimant signed the Uniform Submission Agreement: December 28, 1998

Statement of Answer filed by Respondents on or about: June 21, 1999
Respondent Gruntal signed the Uniform Submission Agreement: March 15, 1999
Respondent Lowman did not submit an executed agreement to arbitrate.

CASE SUMMARY

Claimant alleged that after becoming acquainted with Lowman's father in 1998, she opened a joint account with the elder Lowman at Gruntal, with Respondent Lowman being the account representative. Claimant alleged violations of federal and Pennsylvania securities laws and regulations, NASD rules and regulations and Pennsylvania's Unfair Trade Practices Act, arising out Respondents' actions and inactions regarding a joint account maintained by Claimant and Lowman's father. As a result of an aneurysm in May 1996, Claimant suffers from a partial paralysis and a severe brain injury resulting in cognitive deficiencies. Claimant provided the \$56,000.00 deposited in the account, and there was a written agreement between her and the elder Lowman, which Respondents knew about. Claimant asserted that, among other things, Respondents were to use the funds from Claimant only to

purchase stock of Dell Computers. Respondents knew that none of the principal was to be withdrawn from the account without Claimant's consent, both parties were to receive regular information about the status, and the profits were to be divided between Claimant and the elder Lowman.

Claimant alleged that Respondents ignored their client's instructions by, *inter alia*, refusing to send Claimant monthly statements, permitting the elder Lowman to withdraw the principal that Claimant had contributed, engaging in trading of options based on forged documents, engaging in trading of options that was not suitable in any event, and refusing to permit Claimant to withdraw the funds she contributed in the first place.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted that they had no power to deny the elder Lowman's requests and directions because he was a joint holder of the account. Respondents raised the following defenses: the doctrines of ratification, waiver, and acquiescence; a failure to state a claim upon which relief can be granted; a failure to mitigate her damages; and contributory negligence.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages

sufficient to compensate her for the losses she suffered. These included (a) loss of principal, and (b) loss of profits she would have made on Dell stock

Punitive & Treble Damages

\$56,000.00

Attorneys' Fees

\$70,649.64

Other Costs

\$10,769.59

Other Monetary Relief

\$63,087.75

Respondents requested that Claimant's claims be dismissed with prejudice in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Lowman 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 the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

The Panel considered Respondents' Motion to Dismiss based upon the fact that Respondent Lowman's father was a joint account holder and had not consented to this arbitration, and denied 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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Gruntal must release to Claimant, the entire sum of money in the Gruntal joint account #72J-877-216 of Marie E. Myers and Kenneth Lowman, Sr., as of June 1, 2000, plus any and all accrued interest in the joint account up to the date of disbursement of the funds; and
2. That each party is to bear their own costs and expenses, including attorneys' fees, with the exception of forum fees as specified below; and
3. That any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$250.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,200.00

Pre-hearing process fee = \$600.00

Hearing process fee = \$2,000.00

Adjournment Fees

Adjournments requested during these proceedings:

December 15-16, 1999 adjournment by Claimant = \$600.00

February 28-29, 2000 adjournment by Lowman Waived

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

3 Pre-hearing sessions with Panel x \$600.00 = \$1,800.00

Pre-hearing conferences: October 19, 1999 1 session
 December 16, 1999 1 session
 February 25, 2000 1 session

9 Hearing sessions x \$600.00 = \$5,400.00

Hearing Dates: December 15, 1999 1 session
 March 28, 2000 2 sessions
 April 6, 2000 2 sessions
 May 31, 2000 2 sessions
 June 1, 2000 2 sessions

Total Forum Fees = \$7,200.00

The Panel assessed \$3,900.00 of the forum fees to Claimant.

The Panel assessed \$3,300.00 of the forum fees jointly and severally to Respondents.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$250.00
Adjournment Fee	= \$600.00
Forum Fees	= <u>\$3,900.00</u>
Total Fees	= \$4,750.00
Less payments	= <u>\$850.00</u>
Balance Due NASD Regulation, Inc.	= \$3,900.00

Respondent Gruntal be and hereby is solely liable for:

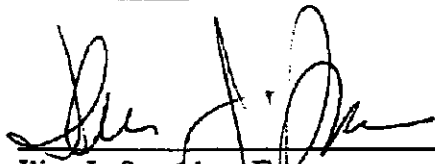
Member Fees	= \$3,800.00
Total Fees	= \$3,800.00
Less payments	= \$3,800.00
Balance Due NASD Regulation, Inc.	= \$ --0--

Respondents, be and hereby are jointly and severally liable for:

Forum Fee	= \$3,300.00
Balance Due NASD Regulation, Inc.	= \$3,300.00

All balances are due and payable to NASD Regulation, Inc.

= CONCURRING ARBITRATORS' SIGNATURES



Ilisa J. Smukler, Esq.
Public Arbitrator, Presiding Chair

June 14, 2000

Date Signed

G. Rick O'Shea, Esq.
Public Arbitrator

Date Signed

Garrett T. Cantwell, Sr.
Industry Arbitrator

Date Signed

June 29, 2000

Date of Service (For NASD office use only)

CONCURRING ARBITRATORS' SIGNATURES

Ilisa J. Smukler, Esq.
Public Arbitrator, Presiding Chair



G. Rick O'Shea, Esq.
Public Arbitrator

Date Signed

06-13-00

Date Signed

Garrett T. Cantwell, Sr.
Industry Arbitrator

Date Signed

June 29, 2000

Date of Service (For NASD office use only)

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Ilisa J. Smukler, Esq.
Public Arbitrator, Presiding Chair

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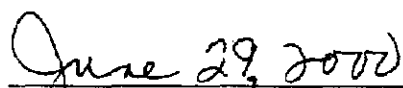
G. Rick O'Shea, Esq.
Public Arbitrator

Date Signed



- Garrett T. Cantwell, Sr.
Industry Arbitrator


Date Signed



Date of Service (For NASD office use only)