

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Frank J. and Rose M. Bancone
Nicholas Bancone

Case No. 99-02904

Names of Respondents

Gruntal & Co., L.L.C.
Michael D. McAfee

REPRESENTATION OF PARTIES

For Claimants Frank J. and Rose M. Bancone and Nicholas Bancone, hereinafter collectively referred to as "Claimants": Richard A. Stephens, Esq., Boca Raton, Florida.

For Respondents Gruntal & Co., LLC ("Gruntal") and Michael McAfee ("McAfee"), hereinafter collectively referred "Respondents": Evan Charkes, Assistant General Counsel, Gruntal until November 1, 1999, at which time Ronald D. Shindler, Esq. of the law firm of Fowler, White, Burnett, Hurley, Banick & Strickroot, P.A., Miami, Florida commenced representation of Respondents. Thereafter, on January 18, 2000, Joseph Vallo, Vice-President, Assistant General Counsel, Gruntal, entered an appearance as co-counsel for Respondent Gruntal.

CASE INFORMATION

Statement of Claim filed on or about: June 25, 1999.

Claimants signed the Uniform Submission Agreement: June 1, 1999.

Statement of Answer filed by Respondents on or about: September 23, 1999.

Respondent Gruntal signed the Uniform Submission Agreement: September 17, 1999.

Respondent McAfee signed the Uniform Submission Agreement: September 21, 1999.

CASE SUMMARY

Claimants asserted the following: Respondents traded unsuitable securities and made unauthorized purchases in two of Claimants' accounts. Both Respondents are in violation of the Securities Exchange Act of 1934, Section 10(b) and Rule 10b-5 thereunder. Respondents have both committed common law fraud and breach of fiduciary duty, as well as a breach of the rules of the National Association of Securities Dealers, Inc. and the New York Stock

Exchange. Further, Respondents churned Claimants' accounts to generate commissions, breached the client agreement and breached an implied covenant of good faith and fair dealing. Respondent Gruntal is also responsible under the theory of respondeat superior and the "control person" theory under the Securities Exchange Act.

Respondents denied the allegations contained in the Statement of Claim and asserted the following: Nicholas Bancone was an experienced businessman and entrepreneur who ran a successful company and who wanted to trade aggressive securities on margin. Nicholas Bancone knowingly assumed the risks associated with this form of investing.

Nicholas Bancone was aware of the losses in the account. He received, reviewed and understood the confirmations and monthly statements generated in his account. He did not complain about the losses in his account even though the bulk of his money had been lost. He specifically authorized the transactions in his account or ratified and accepted them.

The transactions in the account of Frank and Rose Bancone were either initiated by them after discussions with Respondent McAfee, or were done at the specific request of their son, Nicholas Bancone, who had been given authority by his parents to trade their account. Further, Respondents denied that Claimants' accounts were not properly supervised.

Respondents asserted various affirmative defenses including ratification, waiver, estoppel, laches, failure to mitigate, assumption of risk and contributory negligence.

RELIEF REQUESTED

At the hearing, the Claimants amended their relief request and requested compensatory damages of \$504,000.00, punitive damages in excess of \$1,000,000.00, plus interest, attorneys' fees and the costs of the proceeding.

Respondents requested that all claims be dismissed in their entirety and that the costs and disbursements of this action be assessed against Claimants.

OTHER ISSUES CONSIDERED AND 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.

AWARD

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

Respondents are liable, jointly and severally, and shall pay to Claimants Frank and Rose Bancone the sum of \$29,301.00 as compensatory damages, plus interest at the rate of 9% per

annum from October 1, 1997 until the date of payment of the Award.

Respondents are liable, jointly and severally, and shall pay to Claimants Frank and Rose Bancone the sum of \$50,000.00 as punitive damages, plus interest at the rate of 9% per annum from the date of service of the Award until the date of payment of the Award. Punitive damages are awarded pursuant to New York state law. See Mastrobuono v. Shearson Lehman Hutton, 514 U.S. 52 (1995); see also Aldrich v. Thomson McKinnon Securities, 756 F.2d 243 (2d Cir. 1985).

Respondent McAfee is liable and shall pay to Claimant Nicholas Bancone the sum of \$70,441.49 as compensatory damages, plus interest at the rate of 9% per annum from September 1, 1998 until the date of payment of the Award.

Respondent Gruntal is liable and shall pay to Claimant Nicholas Bancone the sum of \$80,815.90 as compensatory damages, plus interest at the rate of 9% per annum from September 1, 1998 until the date of payment of the Award.

In addition to the above, Respondents are liable, jointly and severally, and shall pay to Claimant Nicholas Bancone the sum of \$75,000.00 as compensatory damages, plus interest at the rate of 9% per annum from August 1, 1998 until the date of payment of the Award.

All other requests for relief not specifically addressed herein are 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	= \$500.00
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The claim filing fee was preliminarily waived by the Director of Arbitration. The Panel determined to assess the filing fee against Respondents, jointly and severally.

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	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

Adjournment Fees

Adjournments requested during these proceedings:

June 5, 2000 Hearing Date, adjournment by Respondent Gruntal = \$1,200.00

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:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00 = \$900.00

Pre-hearing conferences: December 14, 1999 1 session

February 16, 2000 1 session

One (1) Pre-hearing session with Panel x \$1,200.00 = \$1,200.00

Pre-hearing conference: December 16, 1999 1 session

Twenty-two (22) Hearing sessions x \$1,200.00 = \$26,400.00

Hearing Dates:

April 5, 2000	2 sessions
April 6, 2000	2 sessions
April 10, 2000	2 sessions
May 18, 2000	2 sessions
May 19, 2000	2 sessions
June 6, 2000	2 sessions
June 7, 2000	2 sessions
June 8, 2000	2 sessions
June 9, 2000	2 sessions
June 19, 2000	2 sessions
June 20, 2000	2 sessions

Total Forum Fees = \$28,500.00

The Panel has assessed the total forum fees of \$28,500.00 jointly and severally to Respondents Gruntal and McAfee.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Respondent Gruntal be and hereby is solely liable for:

Member Fees = \$ 7,600.00

Adjournment Fee	= \$ 1,200.00	
Total Fees	= \$ 8,800.00	
<u>Less payments</u>	<u>= \$ 7,600.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$1,200.00

Respondents Gruntal and McAfee be and hereby are jointly and severally liable for:

Initial Claim Filing Fee	= \$ 500.00	
Forum Fees	= \$28,500.00	
Total Fees	= \$29,000.00	
<u>Less payments</u>	<u>= \$0.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$29,000.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

_____/s/_____
Craig Edward Stein, Esq.
Public Arbitrator, Presiding Chair

July 28, 2000
Signature Date

_____/s/_____
Will Murphy, Esq.
Public Arbitrator

July 31, 2000
Signature Date

_____/s/_____
Dana de Windt
Industry Arbitrator

July 28, 2000
Signature Date

August 2, 2000
Date of Service
(For NASD Dispute Resolution, Inc. office use only)

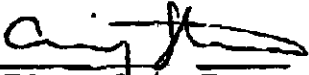
Adjournment Fee	= \$ 1,200.00
Total Fees	= \$ 8,800.00
<u>Less payments</u>	<u>= \$ 7,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,200.00

Respondents Gruntal and McAfee be and hereby are jointly and severally liable for:

Initial Claim Filing Fee	= \$ 500.00
Forum Fees	= \$28,500.00
Total Fees	= \$29,000.00
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$29,000.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures


Craig Edward Stein, Esq.
Public Arbitrator, Presiding Chair

July 28 2000
Signature Date

Will Murphy, Esq.
Public Arbitrator

Signature Date

Dana de Windt
Industry Arbitrator

Signature Date

Date of Service
(For NASD Dispute Resolution, Inc. office use only)

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Initial Claim Filing Fee	= \$ 500.00
Forum Fees	= \$28,500.00
Total Fees	= \$29,000.00
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Balance Due NASD Dispute Resolution, Inc.	= \$29,000.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

Craig Edward Stein, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Will Murphy, Esq.
Public Arbitrator

31 July 2000

Signature Date

Dana de Windt
Industry Arbitrator

Signature Date

Date of Service
(For NASD Dispute Resolution, Inc. office use only)

Adjournment Fee	= \$ 1,200.00
Total Fees	= \$ 8,800.00
<u>Less payments</u>	<u>= \$ 7,600.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,200.00

Respondents Gruntal and McAfee be and hereby are jointly and severally liable for:

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Forum Fees	= \$28,500.00
Total Fees	= \$29,000.00
<u>Less payments</u>	<u>= \$0.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$29,000.00

All balances are due and payable to NASD Dispute Resolution, Inc.

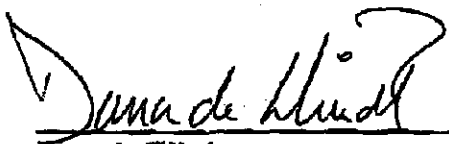
Concurring Arbitrators' Signatures

Craig Edward Stein, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Will Murphy, Esq.
Public Arbitrator

Signature Date



Dana de Windt
Industry Arbitrator



Signature Date

Date of Service
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