

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Harry B. Pascal, individually and as custodian for Zachary Pascal, Nikki Pascal, and Grant Pascal, (Claimant) vs. Gruntal & Co., L.L.C., (Respondent)

Case Number: 99-04402

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Harry B. Pascal, individually and as custodian for Zachary Pascal, Nikki Pascal, and Grant Pascal, hereinafter referred to as "Claimant": Neal Brickman, Esq., The Law Offices of Neal Brickman, New York, NY.

Respondent, Gruntal & Co., L.L.C., hereinafter referred to as "Respondent": Joseph E. Gasperetti, Esq., Law Offices of Joseph E. Gasperetti, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 27, 1999.

Claimant signed the Uniform Submission Agreement: October 27, 1999.

Statement of Answer filed by Respondent on or about: February 14, 2000.

Respondent signed the Uniform Submission Agreement: March 17, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: fraudulent inducement; improper churning; unauthorized transfers of funds; and unsuitable/improper investment of funds. Claimants claims involved the stock of Intel and Paxton Communications Corporation ("PXN").

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant ordered, approved, participated in, had notice of, and ratified the acts and transactions complained of in the Statement of Claim, therefore he is barred from recovery by the doctrines of ratification, waiver, and estoppel; any losses allegedly suffered by Claimant were caused by his own trading decisions and market conditions outside the control of Respondent and were not caused by actions of Respondent; Claimant knowingly and voluntarily assumed all the risks of the transactions of which he complains; Claimant failed to take reasonable steps to mitigate the alleged losses suffered; Respondent exercised good faith in its supervision of the brokers assigned to

Claimant's accounts; and Claimant failed to exercise reasonable or ordinary care, caution, or prudence with respect to the matters alleged in the Statement of Claim, therefore Claimant is barred from obtaining any Award, or any Award must be reduced by the percentage to which Claimant's negligence or fault contributed to any damages or losses allegedly suffered.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory damages:	\$680,000.00
Punitive damages:	unspecified
Attorney's Fees:	unspecified
Other Costs:	unspecified

Respondent requested that the Panel enter an Award in its favor as follows:

- a. Dismissing the Statement of Claim in its entirety;
- b. Awarding Respondent its costs, filing fees, and hearing fees;
- c. Finding that the claims asserted in the Statement of Claim constitute "abusive litigation" within the meaning of Section 21D(c) of the Private Securities Litigation Reform Act (15 U.S.C. Section 78u-4(c)(1)) and therefore awarding Respondent the attorneys' fees it incurs in defending this arbitration; and
- d. For such other and further relief as to the Panel may seem just and proper.

### **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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$3,600.00 as compensatory damages.
2. Claimant's request for punitive damages is hereby denied.

3. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$375.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
4. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 375.00
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#### **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, Gruntal & Co., L.L.C. is a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

#### **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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: August 1, 2000	1 session

Two (2) Hearing sessions x \$1,200.00	= \$2,400.00
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<u>Hearing Date:</u> November 6, 2000	<u>2 sessions</u>
Total Forum Fees	= \$3,600.00

The Panel has assessed all of the forum fees against Respondent.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
Total Fees	= \$ 375.00
<u>Less payments</u>	= \$1,575.00
Refund Due Claimant	= \$1,200.00

*As stated in the "Award" section above, Respondent is liable and shall reimburse Claimant for the \$375.00 filing fee.*

2. Respondent be and hereby is solely liable for:

Member Fees	= \$6,100.00
<u>Forum Fees</u>	= \$3,600.00
Total Fees	= \$9,700.00
<u>Less payments</u>	= \$6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,600.00

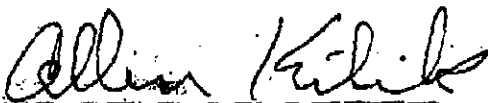
All balances are due and payable to NASD Dispute Resolution, Inc.

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**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Allen Killik, Esq.  
Public Arbitrator, Presiding Chair

11-23-2000

Signature Date

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Ronald E. Miller  
Public Arbitrator

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Signature Date

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John R. Buehler  
Industry Arbitrator

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Signature Date

November 30, 2000  
Date of Service (For NASD office use only)

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Allen Kilik, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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*Ronald E. Miller*

Ronald E. Miller  
Public Arbitrator

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*27 November 2000*  
Signature Date

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John R. Buehler  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

November 30, 2000

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NASD Dispute Resolution, Inc.  
Arbitration No. 99-04402  
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Allen Kilik, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Ronald E. Miller  
Public Arbitrator

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Signature Date

  
John R. Buchler  
Industry Arbitrator

27 NOV 2000  
\_\_\_\_\_  
Signature Date

November 30, 2000  
Date of Service (For NASD office use only)