

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Joseph Shively, (Claimant) vs. Joseph Costa, The GMS Group, LLC, and Gruntal & Co., LLC,
(Respondents)

Case Number: 00-03934

Hearing Site: Buffalo, New York

REPRESENTATION OF PARTIES

Claimant, Joseph Shively, hereinafter referred to as "Claimant": Patrick G. Finegan, Jr., Esq.,
a sole practitioner, Washington, DC.

Respondents, Joseph Costa ("Costa"), The GMS Group, LLC ("GMS"), and Gruntal & Co.,
LLC ("Gruntal"), hereinafter collectively referred to as "Respondents": William D.
Briendel, Esq., Greenberg Traurig LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: September 7, 2000.

Claimant signed the Uniform Submission Agreement: September 6, 2000.

Joint Statement of Answer filed by Respondents on or about: January 30, 2001.

Costa did not sign a Uniform Submission Agreement.

GMS did not sign a Uniform Submission Agreement.

Gruntal did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: fraud; breach of contract; breach of
fiduciary duty; and negligence. Claimant's claim involved a variety of debt investments.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the
Statement of Claim and asserted the following defenses: Claimant fails to state a claim upon
which relief may be granted; Claimant has, by his conduct, waived any and all claims against
Respondents; Claimant is estopped by his conduct from asserting the claims alleged in the
Statement of Claim; Claimant is barred from recovery against Respondents because he
received verbal and written notice of, and ratified, the transactions now complained of and
upon which recovery is sought; Claimant's losses, if any, were not proximately caused by
Respondents; any damages sustained by Claimant were caused in whole or in part by the
negligence and lack of due care of Claimant and without any negligence on the part of

Respondents; Claimant expressly ordered, approved, participated in, and authorized the transactions complained of and upon which recovery is sought; any damages sustained by Claimant were caused by independent, superseding, and intervening acts not caused by Respondents; and Claimant failed to mitigate his alleged damages.

RELIEF REQUESTED

Claimant requested compensatory and lost opportunity damages totaling \$1,440,000.00, plus punitive damages in the amount of \$3,500,000.00.

Respondents requested that the Panel dismiss the claims against them in their entirety, and award such other and further relief as it deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearings in this matter, Respondents made a motion to dismiss this arbitration. The Panel determined to reserve decision on said motion until the conclusion of the hearings.

Costa, GMS, and Gruntal did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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. Claimant's claims are hereby dismissed in their entirety.

2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Costa's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Costa must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. 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	= \$ 600.00
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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, The GMS Group, LLC and Gruntal & Co., LLC are parties.

The GMS Group, LLC

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

Gruntal & Co., LLC

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

Adjournment Fees

Adjournments requested during these proceedings:

Sept. 11, 12, 13 & 14, 2001, adjournment by Respondents	= \$1,200.00
Oct. 9, 10, 11 & 12, 2001, adjournment by Respondents	= 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$2,400.00
Pre-hearing conferences: May 23, 2001	1 session
July 16, 2001	1 session
Six (6) Hearing sessions x \$1,200.00	= \$7,200.00
Hearing Dates: January 8, 2002	2 sessions
January 9, 2002	2 sessions
January 10, 2002	2 sessions
Total Forum Fees	= \$9,600.00

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

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 9,600.00
Total Fees	= \$10,200.00
<u>Less payments</u>	= \$ 3,000.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 7,200.00
2. GMS be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
Total Fees	= \$ 7,600.00
<u>Less payments</u>	= \$ 2,500.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 5,100.00
3. Gruntal be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 7,600.00
Total Fees	= \$ 7,600.00
<u>Less payments</u>	= \$ 7,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

4. Respondents be and hereby are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$ 1,200.00
<u>Total Fees</u>	= \$ 1,200.00
<u>Less payments</u>	= \$ 1,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

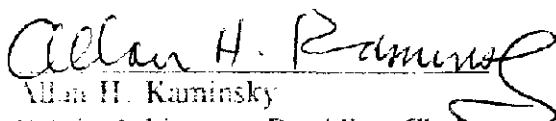
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Allan H. Kaminsky	-	Public Arbitrator, Presiding Chair
Vincent J. Muffoletto	-	Public Arbitrator
Donald G. McGrath, Esq.	-	Industry Arbitrator

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.


Allan H. Kaminsky
Public Arbitrator, Presiding Chair

1 - 23 - 2002
Signature Date

Vincent J. Muffoletto
Public Arbitrator

Signature Date

Donald G. McGrath, Esq.
Industry Arbitrator

Signature Date

January 31, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL

Allan H. Kaminsky	-	Public Arbitrator, Presiding Chair
Vincent J. Muffoletto	-	Public Arbitrator
Donald G. McGrath, Esq.	-	Industry Arbitrator

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Allan H. Kaminsky
Public Arbitrator, Presiding Chair

Signature Date



Vincent J. Muffoletto
Public Arbitrator

1-25-02

Signature Date

Donald G. McGrath, Esq.
Industry Arbitrator

Signature Date

January 31, 2002
Date of Service (For NASD office use only)

ARBITRATION PANEL

Allan H. Kaminsky	-	Public Arbitrator, Presiding Chair
Vincent J. Muffoletto	-	Public Arbitrator
Donald G. McGrath, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signatures

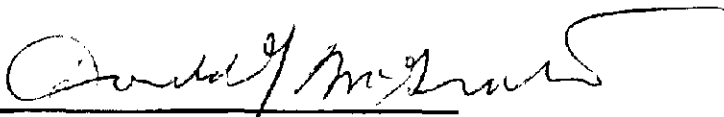
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Allan H. Kaminsky
Public Arbitrator, Presiding Chair

Signature Date

Vincent J. Muffoletto
Public Arbitrator

Signature Date



Donald G. McGrath, Esq.
Industry Arbitrator

1-24-02
Signature Date

January 31, 2002

Date of Service (For NASD office use only)