

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Declan Doherty, (Claimant) vs. Joseph Gunnar & Co., LLC and James J. Crew, (Respondents)

Case Number: 01-00106

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Declan Doherty, hereinafter referred to as "Claimant": Michael S. Press, Esq., Warner & Scheurman, New York, NY (Mr. Press was with the law firm of Riad & Associates, P.C., New York, NY, when this claim was originally filed).

Respondent, Joseph Gunnar & Co., LLC ("Gunnar"): John E. Lawlor, Esq., a sole practitioner, Mineola, NY. Previously represented by: Gregg R. Evangelist, Esq., Joseph Gunnar & Co., LLC, New York, NY.

Respondent, James J. Crew ("Crew"): Donovan L. Wickline, Esq., Law Office of Donovan Wickline, P.C., Brooklyn Heights, NY. Previously represented by: Jacob Horowitz, Esq., Seward & Kissel, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: January 8, 2001.

Claimant signed the Uniform Submission Agreement: January 8, 2001.

Statement of Answer filed by Gunnar on or about: March 23, 2001.

Gunnar signed the Uniform Submission Agreement: March 23, 2001.

Statement of Answer filed by Crew on or about: April 12, 2001.

Crew signed the Uniform Submission Agreement: April 12, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: churning; fraudulent conduct; unsuitability; breach of contract; unauthorized trading; and failure to supervise. Claimant's claim involved a variety of stocks.

Unless specifically admitted in its Answer, Gunnar denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a cause of action upon which relief can be granted; all risks inherent in investing in the securities markets, and in the specific investments purchased, were fully explained to Claimant and he knowingly, willingly, and voluntarily assumed the risks of investing in the market; Claimant authorized, approved, and/or ratified all of the transactions executed in his securities account; Gunnar discharged its responsibilities in a professional and ethical manner and all of Gunnar's actions were within the parameters of accepted brokerage procedure and all exchange and governmental regulations; Gunnar acted in good faith and exercised at least the degree of care, diligence, and skill which ordinarily prudent men and women would exercise in similar circumstances and like positions; the Panel may not render an Award of attorneys' fees in this case as a matter of law; Claimant's comparative fault, lack of diligence, and failure to conduct his financial affairs reasonably and responsibly bars any recovery of damages herein; Claimant is barred from any recovery in this case by virtue of the doctrine of *in pari delicto*; the damages allegedly suffered by Claimant have no causal relationship with any act committed by or legally attributed to Gunnar; and Claimant's calculation of damages is improper and is such that Claimant seeks a windfall.

Unless specifically admitted in his Answer, Crew denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a cause of action upon which relief can be granted; all risks inherent in investing in the securities markets, and in the specific investments purchased, were fully explained to Claimant and he knowingly, willingly, and voluntarily assumed the risks of investing in the market; Claimant authorized, approved, and/or ratified all of the transactions executed in his Gunnar account; New York law prohibits the award of attorneys' fees where, as here, there is no express agreement for such an award between the parties; Claimant's comparative fault, lack of diligence, and failure to conduct his financial affairs reasonably and responsibly bars any recovery of damages herein; Claimant is barred from any recovery in this case by virtue of the doctrine of *in pari delicto*; Claimant's calculation of damages is improper and seeks a windfall; Crew provided Claimant with checks totaling \$20,000.00 under duress and threat of physical harm, and thus, these checks were not an admission of wrongdoing by Crew; and under the circumstances, Crew acted reasonably and responsibly, and did not cause Claimant to suffer losses to his Gunnar account as a result of improper or unauthorized trades.

RELIEF REQUESTED

Claimant requested compensatory damages, lost income and opportunity losses, disgorgement of commissions and margin interest, and punitive damages in an amount to be determined at the hearing, but not to exceed \$500,000.00. Claimant also requested an Award of attorney's and expert's fees, all costs of prosecuting this proceeding against Respondent, and such other relief as the Panel deems just and proper.

Gunnar requested that the Panel dismiss the Statement of Claim in its entirety and award such costs to Gunnar as are just and proper, including attorneys' fees and the costs of this arbitration.

Crew requested that the Panel (1) dismiss the Statement of Claim in its entirety, (2) award costs, including reasonable attorneys' fees, to Crew in defending this arbitration, and (3) grant such other and further relief as the Panel may deem 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. Gunnar and Crew be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$10,000.00 as compensatory damages, plus interest at the rate of 5% accruing from September 10, 1998 through the date of this Award.
2. Gunnar be and hereby is solely liable for and shall pay to Claimant the sum of \$35,000.00 as compensatory damages.
3. Claimant's request for punitive damages is hereby denied.
4. Gunnar be and hereby is liable for and shall pay to Claimant the sum of \$300.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
5. All other requests for relief are hereby denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$ 300.00

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, Joseph Gunnar & Co., LLC is a party.

Member surcharge = \$ 1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 2,500.00

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 a single arbitrator x \$450.00 = \$ 450.00

Pre-hearing conference: November 12, 2001 1 session

Two (2) Pre-hearing sessions with Panel x \$1,125.00 = \$ 2,250.00

Pre-hearing conferences: August 7, 2001 1 session

January 10, 2002 1 session

Eight (8) Hearing sessions x \$1,125.00 = \$ 9,000.00

Hearing Dates: May 22, 2002 2 sessions

May 28, 2002 2 sessions

July 23, 2002 2 sessions

July 24, 2002 2 sessions

Total Forum Fees = \$11,700.00

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

Fee Summary

1. Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 1,425.00
Refund Due Claimant	= \$ 1,125.00

As stated in the "Award" section above, Gunnar is liable for and shall reimburse Claimant for the \$300.00 filing fee.

2. Gunnar be and hereby is solely liable for:

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$11,700.00
<u>Total Fees</u>	= \$16,300.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$11,100.00

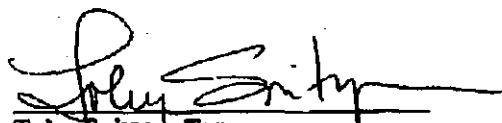
All balances are payable to NASD Dispute Resolution, and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Toby Spitzer, Esq.	-	Public Arbitrator, Presiding Chair
Felix Wroblewski	-	Public Arbitrator
Abe I. Borenstein	-	Non-Public 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.



Toby Spitzer, Esq.
Public Arbitrator, Presiding Chair

8/28/02
Signature Date

Felix Wroblewski
Public Arbitrator

Signature Date

Abe I. Borenstein
Non-Public Arbitrator

Signature Date

August 30, 2002
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

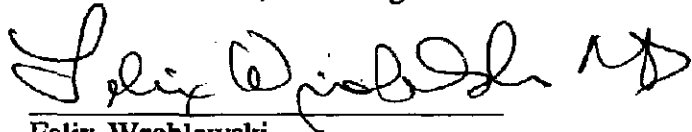
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Concurring Arbitrators' Signatures

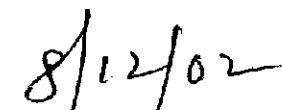
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Toby Spitzer, Esq.
Public Arbitrator, Presiding Chair

Signature Date



Felix Wroblewski
Public Arbitrator



Signature Date

Abe I. Borenstein
Non-Public Arbitrator

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August 30, 2002
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Toby Spitzer, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Felix Wroblewski
Public Arbitrator

Signature Date


Abe I. Boronstein
Non-Public Arbitrator

8/13/02
Signature Date

August 30, 2002
Date of Service (For NASD Dispute Resolution use only)