

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Michael Banschback, (Claimant) vs. Joseph Gunnar & Co., LLC, James Crew, and Jonathan Hurd, (Respondents)

Case Number: 01-02454

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Michael Banschback, hereinafter referred to as "Claimant": Robert M. Vella, Jr., Esq., Pillari & Vella, Mineola, NY.

Respondents, Joseph Gunnar & Co., LLC ("Gunnar") and James Crew ("Crew"): John E. Lawlor, Esq., a sole practitioner, Mineola, NY.

Respondent, Jonathan Hurd ("Hurd"): Frank J. Evangelist, Esq., a sole practitioner, Huntington, NY. Previously represented by: Gregg R. Evangelist, Esq., a sole practitioner, Centerport, NY and John E. Lawlor, Esq., a sole practitioner, Mineola, NY, respectively.

CASE INFORMATION

Statement of Claim filed on or about: May 10, 2001.
Claimant signed the Uniform Submission Agreement.

Joint Statement of Answer filed by Gunnar, Crew, and Hurd on or about: July 2, 2002.
Gunnar did not sign a Uniform Submission Agreement.
Crew did not sign a Uniform Submission Agreement.

Amended Statement of Answer and Motion to Dismiss filed by Hurd on or about: August 13, 2002.
Hurd did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unauthorized transactions; fraud; breach of contract; breach of fiduciary duty; negligence; failure to exercise due diligence; and violation of Section 27, Article 3 of the NASD Rules of Fair Practice. Claimant's claim involved unspecified financial products.

Unless specifically admitted in their Joint Answer, Gunnar, Crew, and Hurd denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's losses, if any, are the result of market conditions or eventualities over which Respondents had no control and for which they cannot be held responsible; Claimant's losses, if any, are a result of Claimant's own active, affirmative or negligent conduct, and no recovery can be had; Claimant has failed to mitigate his damages and no recovery can be had; Claimant is estopped from asserting his claims against Respondents and has waived any claims which he may have had against Respondents; Claimant assumed the risks of the transactions alleged in the Statement of Claim; Claimant has failed to exercise that degree of care and diligence required for his own protection; the Statement of Claim fails to state a claim upon which relief can be granted; by the exercise of reasonable care, Claimant could have avoided and/or mitigated the consequences of any alleged fraud, negligence, or wrongdoing which they allege on the part of Respondents; Claimant was contributorily negligent in causing any injury or damage allegedly sustained; Claimant directly or indirectly authorized, consented to, acquiesced in, or ratified each of the actions and omissions complained of; the Statement of Claim is barred by the doctrine of laches; there is no private cause of action for violations of the NASD Conduct Rules; the Statement of Claim is barred by the applicable statute of limitations; at all times, respondents acted in good faith and without any intent to harm Claimant; the damages claimed by Claimant are barred, or limited, by applicable provisions, restrictions, and limitations in the account agreements, and documentation relating to Claimant's account; the damages claimed by Claimant are duplicative or do not legally follow or relate to the alleged causes of action set forth in the Statement of Claim; the damages claimed by Claimant are barred as speculative; under applicable law and/or the facts and circumstances of this case, Claimant is not entitled to an award of punitive, statutory, or exemplary damages; under applicable law and/or the facts and circumstances of this case, Claimant is not entitled to an Award of post-judgment or pre-judgment interest, rescission of any or all transactions, or lost opportunity damages; and under applicable law and/or the facts and circumstances of this case, Claimant is not entitled to an award of attorneys' fees, costs, or expenses.

Unless specifically admitted in his Amended Answer, Hurd denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to state claims against Hurd upon which relief can be granted; the damages allegedly suffered by Claimant have no causal relationship with any act committed by or legally attributed to Hurd; Hurd is not liable to Claimant as there are no substantive allegations supported by fact that Hurd committed any wrongdoing; Hurd discharged his responsibilities in a professional and ethical manner, and all of his actions were within the parameters of accepted brokerage procedures and all exchange and governmental regulations; under applicable law and/or the facts and circumstances of this case, there is no fiduciary relationship between Claimant and Hurd; and under applicable law and/or the facts and circumstances of this case, there is no contractual relationship between Claimant and Hurd.

RELIEF REQUESTED

Claimant requested:

- a. Rescission of all unauthorized transactions together with compensatory damages in the amount of \$148,037.40, plus pre and post-judgment interest thereon;
- b. Punitive damages;
- c. Costs of this action, including costs and expenses of expert witnesses and filing fees;
- d. Attorneys' fees; and
- e. Such other and further relief as to the Panel seems just and proper under the circumstances.

Gunnar, Crew, and Hurd requested that the Statement of Claim be dismissed in its entirety, and that an Award be entered in their favor for costs and attorneys' fees.

Hurd requested that the Panel:

- a. Dismiss Claimant's claims in their entirety;
- b. Issue an Award ordering the expungement of this claim from Hurd's CRD record; and
- c. Issue an Award in his favor for costs and attorneys' fees, and such other just and equitable relief as may be granted.

OTHER ISSUES CONSIDERED AND DECIDED

Gunnar, Crew, and Hurd did not file with NASD Dispute Resolution 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 Panel determined that Claimant failed to answer Respondents' Discovery Request in a timely manner. As a result, the Panel ordered that Claimant pay to the Respondents \$750.00 in costs.

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. 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
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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, 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 Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: November 6, 2002	1 session
Three (3) Hearing sessions x \$1,125.00	= \$3,375.00
Hearing Dates: March 19, 2003	2 sessions
March 20, 2003	1 session
Total Forum Fees	= \$4,500.00

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

Fee Summary

1. Claimant is solely liable for:

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

2. Gunnar is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$4,500.00
Total Fees	= \$9,100.00
Less payments	= \$4,750.00
Balance Due NASD Dispute Resolution	= \$4,350.00

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

ARBITRATION PANEL

William H. Morley, Jr.	-	Public Arbitrator, Presiding Chair
Barry A. Mahler, Esq.	-	Public Arbitrator
Robert S. Getman, Esq.	-	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.

William H. Morley, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Barry A. Mahler, Esq.
Public Arbitrator

Signature Date


Robert S. Getman, Esq.
Public Arbitrator

4/11/03
Signature Date

April 29, 2003

Date of Service (For NASD Dispute Resolution use only)

NASD Dispute Resolution
Arbitration No. 01-02454
Award Page 7

ARBITRATION PANEL

William H. Morley, Jr.	-	Public Arbitrator, Presiding Chair
Barry A. Mahler, Esq.	-	Public Arbitrator
Robert S. Getman, Esq.	-	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.

William H. Morley, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Barry A. Mahler, Esq.
Public Arbitrator

Signature Date

Robert S. Getman, Esq.
Public Arbitrator

Signature Date

April 29, 2003

Date of Service (For NASD Dispute Resolution use only)