

**Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Joseph Gunnar & Company, LLC, (Claimant) vs. John P. Martinos, (Respondent)

Case Number: 01-02932

Hearing Site: New York, New York

---

**REPRESENTATION OF PARTIES**

Claimant, Joseph Gunnar & Company, LLC, hereinafter referred to as "Claimant": Carolyn D. Royer, Chief Compliance Officer, Joseph Gunnar & Company, LLC, New York, NY. Previously represented by: Gregg R. Evangelist, Esq., General Counsel, Joseph Gunnar & Company, LLC, New York, NY.

Respondent, John P. Martinos, hereinafter referred to as "Respondent": Darren L. Ofsink, Esq., Guzov, Steckman & Ofsink, LLC, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 1, 2001.

Claimant signed the Uniform Submission Agreement: June 1, 2001.

Statement of Answer and Counterclaim filed by Respondent on or about: August 21, 2001.

Respondent signed the Uniform Submission Agreement: September 4, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract and failure to repay commission draw.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant has failed to perform its obligations under the contract pursuant to which it commenced this arbitration and Claimant fraudulently induced Respondent to enter into the contract at issue.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$11,050.00, plus interest at the rate of 8% per year, any additional costs, fees, and expenses associated with this arbitration, and such other relief as is just and proper.

Respondent requested:

- a. Dismissal of Claimant's claim;
- b. The costs of this arbitration; and
- c. Such other and further relief as may be just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

By letter dated September 4, 2001, Respondent advised NASD Dispute Resolution that he was withdrawing his Counterclaim.

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 Arbitrator 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	= \$ 750.00
Counterclaim filing fee	= \$ 250.00

### **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 & Company, LLC is a party.

Member surcharge = \$ 400.00

### **Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with a single arbitrator x \$450.00 = \$1,350.00

Pre-hearing conferences:	December 18, 2001	1 session
	December 28, 2001	1 session
	April 19, 2002	1 session

Two (2) Hearing sessions x \$450.00 = \$ 900.00

Hearing Date: May 30, 2002 2 sessions

---

Total Forum Fees = \$2,250.00

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	= \$ 750.00
Member Fees	= \$ 400.00
Forum Fees	= \$2,250.00
Total Fees	= \$3,400.00
Less payments	= \$1,850.00
Balance Due NASD Dispute Resolution	= \$1,550.00

2. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 250.00
Total Fees	= \$ 250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 250.00

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

**ARBITRATION PANEL**

Judith R. MacDonald, Esq. -

Non-Public Arbitrator

**Arbitrator's Signature**

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.

Judith R. MacDonald  
Judith R. MacDonald, Esq.  
Non-Public Arbitrator

July 25, 2002  
Signature Date

August 2, 2002  
Date of Service (For NASD Dispute Resolution use only)