

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimants

Peter Demos, Jr. and Angelica Sponza

Case Number: 02-07820

Name of the Respondents

Joseph Gunnar & Co., LLC
Cantella & Co., Inc.

Hearing Site: Charlotte, NC

Nature of the Dispute: Customers v. Members.

REPRESENTATION OF PARTIES

Claimants, Peter Demos and Angelica Sponza, hereinafter referred to as "Claimants", were represented by Sarah G. Anderson, Esq., Clawson & Staubes, LLC, Charleston, South Carolina.

Respondent, Joseph Gunnar & Co., LLC ("Joseph Gunnar"), was represented by John E. Lawlor, Esq., Attorney at Law, Mineola, New York.

Respondent, Cantella & Co., Inc ("Cantella"), was represented by Matthew Tracy, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on December 27, 2002.

Claimants signed the Uniform Submission Agreement on December 23, 2002.

Statement of Answer filed by Respondent Joseph Gunnar on March 4, 2003.

Motion to Dismiss, Motion for a More Definite Statement and Statement of Answer filed by Respondent Cantella on March 14, 2003.

A representative of Respondent Joseph Gunnar signed the Uniform Submission Agreement on January 16, 2003.

Respondent Cantella did not file a Uniform Submission Agreement with NASD Dispute Resolution.

Motion to Sever filed by Respondent Cantella on March 14, 2003.

Claimants filed a Memorandum in Opposition to Respondent Cantella's Motion to Dismiss, Motion to Sever and For a More Definite Statement on May 7, 2003.

Respondent Cantella filed a Reply Memorandum in Further Support of its Motion to Dismiss, Motion for a More Definite Statement and Motion to Sever on June 18, 2003.

Claimants filed a Memorandum in Further Opposition to Respondent Cantella's Motion to Sever on November 12, 2003.

CASE SUMMARY

Claimants asserted the following causes of action, among others: suitability, violation of section 10(b) and Rule 10b-5 of the 1934 Securities and Exchange Act, churning, breach of fiduciary duty, negligence, recklessness, breach of contract, *respondeat superior*, failure to supervise, and fraud. The causes of action relate to the purchase and sale of various unspecified technology stocks.

Unless specifically admitted in its Answer, Respondent Joseph Gunnar denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimants' claims are barred by the doctrines of laches, estoppel, waiver and ratification; authorization; failure to mitigate damages; assumption of the risk; Claimants' claims are barred by the statute of limitations; contributory negligence; and failure to state a claim upon which relief may be granted.

Unless specifically admitted in its Answer, Respondent Cantella denied the allegations made in the Statement of Claim and asserted the following defenses, among others: Claimants' claims are barred by the doctrines of ratification, waiver, estoppel and laches; assumption of the risk; Claimants' claims are barred by the statutes of limitations; and failure to mitigate damages.

RELIEF REQUESTED

Claimants requested compensatory damages in an amount to be proved at trial that is more than \$200,000 but less than \$500,000, punitive damages, interest, attorneys' fees, and other costs.

Respondent Joseph Gunnar requested that the Statement of Claim be dismissed in its entirety.

Respondent Cantella requested that Claimants' claims be dismissed in their entirety and that it be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Cantella did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitration Panel (the "Panel") on all issues submitted.

On September 26, 2003, the Panel denied Respondent Cantella's Motion to Dismiss and Motion for a More Definite Statement.

At the hearing on the merits, the Panel denied Respondent Cantella's Motion to Sever.

At the hearing on the merits, Respondents Joseph Gunnar and Cantella made an oral Motion to Dismiss, which the Panel denied.

The parties 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 Joseph Gunnar is liable to and shall pay to Claimants the sum of \$85,000.00 in compensatory damages;
2. Respondent Cantella is liable to and shall pay to Claimants the sum of \$45,000.00 in compensatory damages;
3. Respondent Joseph Gunnar is liable to and shall pay to Claimants the sum of \$100.00 in partial reimbursement for the initial-claim filing fee;
4. Respondent Cantella is liable to and shall pay to Claimants the sum of \$100.00 in partial reimbursement for the initial-claim filing fee;
5. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed herein; and,
6. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondents Joseph Gunnar and Cantella are parties.

<u>Respondent Joseph Gunnar</u>	
Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Respondent Cantella

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00	= \$ 450.00
Pre-hearing conference: December 2, 2003 1 session	

One (1) Pre-hearing session with Panel @ \$ 1,125.00	= \$ 1,125.00
Pre-hearing conference: September 11, 2003 1 session	

Eight (8) Hearing sessions @ \$ 1,125.00	= \$ 9,000.00
Hearing Dates:	
March 2, 2004	2 sessions
March 3, 2004	2 sessions
March 4, 2004	2 sessions
March 5, 2004	2 sessions

Total Forum Fees	= \$ 10,575.00
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1. The Panel has assessed \$ 3,525.00 of the forum fees to Claimants.
2. The Panel has assessed \$ 3,525.00 of the forum fees to Respondent Joseph Gunnar.
3. The Panel has assessed \$ 3,525.00 of the forum fees to Respondent Cantella.

Fee Summary

1. Claimants are assessed and shall pay:	
Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,525.00
Total Fees	= \$ 3,825.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 2,400.00

2. Respondent Joseph Gunnar is assessed and shall pay:	
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,525.00
Total Fees	= \$ 8,725.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 3,525.00

3. Respondent Cantella is assessed and shall pay:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,525.00
Total Fees	= \$ 8,725.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 3,525.00

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

ARBITRATION PANEL

C. Marcus Harris, Esq.	-	Public Arbitrator, Presiding Chairperson
George Szontagh	-	Public Arbitrator, Panelist
James Edward Banks, Jr., Esq.	-	Non-Public Arbitrator, Panelist

03/18/2004

NASD Dispute Resolution

Arbitration No. 02-07820

Award Page 6

Concurring Arbitrators' Signatures

C. Marcus Harris

C. Marcus Harris, Esq.

Public Arbitrator, Presiding Chairperson

3-16-04

Signature Date

George Szontagh

Public Arbitrator, Panelist

Signature Date

James Edward Banks, Jr., Esq.

Non-Public Arbitrator, Panelist

Signature Date


March 17, 2004

Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

C. Marcus Harris, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


George Szontagh
Public Arbitrator, Panelist

MARCH 15, 2004
Signature Date

James Edward Banks, Jr., Esq.
Non-Public Arbitrator, Panelist

Signature Date

March 17, 2004
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

C. Marcus Harris, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

George Szontagh
Public Arbitrator, Panelist

Signature Date

James Edward Banks
James Edward Banks, Jr., Esq.
Non-Public Arbitrator, Panelist

March 16, 2005
Signature Date

March 17, 2004
Date of Service (For NASD Dispute Resolution office use only)