

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Stephen M. Baranek and John O. Whalen (Claimants) vs. Joseph Gunnar & Co., LLC
(Respondents)

Case Number: 03-00065

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Stephen M. Baranek ("Baranek") and John O. Whalen ("Whalen"), hereinafter collectively referred to as "Claimants": Mikel J. Hoffman Esq., sole practitioner, Babylon, NY.

Respondent, Joseph Gunnar & Co., hereinafter referred to as "Respondent": Marc J. Ross Esq., Sichenzia Ross Friedman Ference LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: December 18, 2002.

Claimants signed the Uniform Submission Agreement: December 18, 2002.

Claimants Reply to Counterclaim filed on or about: April 4, 2003.

Respondent's Motion to Dismiss, Answer and Counterclaim filed on or about: March 4, 2003.

Respondent signed the Uniform Submission Agreement: January 16, 2003.

CASE SUMMARY

Claimants asserted the following causes of action: breach of contract; wrongful termination; misrepresentation and fraud.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In its counterclaim, Respondent asserted the following cause of action: misrepresentation and fraud.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages in the amounts of \$110,577.00 and \$103,943.00;
2. Forum fee, attorneys' fees, witness and production fees.

Respondent requested an Award:

1. granting its Motion to Dismiss and dismissing the Statement of Claim in its entirety with prejudice;
2. denying each and every claim asserted in the Statement of Claim and dismissing the Statement of Claim;
3. granting an award in its favor against Claimants in an amount to be determined at the hearing, but in no event less than \$100,000.00; and
4. such other and further relief as the Panel deems just, equitable 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. Respondent is liable for and shall pay compensatory damages to Claimant Baranek in the amount of \$110,577.00 and Claimant Whalen in the amount of \$103,943.00;
2. Respondent's Counterclaim is denied in its entirety;
3. Any and all relief not specifically addressed herein are 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
Counter claim	= \$1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Joseph Gunnar & Co., LLC is a party.

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 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 session with Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences:	
June 2, 2003	1 session
June 19, 2003	1 session
Four (4) Hearing sessions with Panel @ \$1,125.00	= \$4,500.00
Hearing Dates:	
September 15, 2003	2 sessions
September 16, 2003	2 sessions
Total Forum Fees	= \$6,750.00

1. The Panel has assessed \$3,375 of the forum fees against jointly and severally against Claimants.
2. The Panel has assessed \$3,375.00 of the forum fees against Respondent.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,375.00
Total Fees	= \$ 3,675.00
Less payments	= \$ 2,850.00
Balance Due NASD Dispute Resolution	= \$ 825.00

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2. Respondent is solely liable for:

Counter claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 3,375.00</u>
Total Fees	= \$ 9,575.00
<u>Less payments</u>	<u>= \$ 6,950.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,625.00


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

ARBITRATION PANEL

William L. Cravens	-	Public Arbitrator, Presiding Chair
Anthony E. Rapp	-	Public Arbitrator
Richard W. Reilly	-	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.



William L. Cravens
Public Arbitrator, Presiding Chairperson

10/13/03

Signature Date

Anthony E. Rapp
Public Arbitrator

Signature Date

Richard W. Reilly
Non-Public Arbitrator

Signature Date

October 21, 2003

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

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Anthony E. Rapp	-	Public Arbitrator
Richard W. Reilly	-	Non-Public Arbitrator

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William L. Cravens
Public Arbitrator, Presiding Chairperson

Signature Date



Anthony E. Rapp
Public Arbitrator

10-21-03

Signature Date

Richard W. Reilly
Non-Public Arbitrator

Signature Date

October 21, 2003

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ARBITRATION PANEL

William L. Cravens	-	Public Arbitrator, Presiding Chair
Anthony E. Rapp	-	Public Arbitrator
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Concurring Arbitrators' Signatures

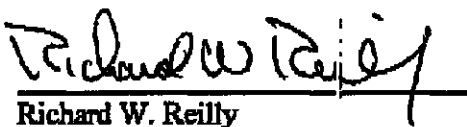
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Public Arbitrator, Presiding Chairperson

Signature Date

Anthony E. Rapp
Public Arbitrator

Signature Date



Richard W. Reilly
Non-Public Arbitrator



Signature Date

October 21, 2003

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