

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

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In the Matter of the Arbitration Between:

Randy Langhamer (Claimant) v. Joseph Gunnar & Co. , Joseph A. Alagna, Jr., Brian T. Clendenin, Steven Singer, Joseph Duarte, and Abner Zalaznick (Respondents)

Case Number: 03-00386

Hearing Site: New York, New York

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Nature of the Dispute: Associated Person vs. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Randy Langhamer ("Langhamer") hereinafter referred to as "Claimant": Richard A. Roth, Esq., The Roth Law Firm, New York, NY. Previously represented by: Richard A. Roth, Esq., Littman Krooks & Roth, P.C., New York, NY.

Respondents Joseph Gunnar & Co. ("Joseph Gunnar"), Joseph A. Alagna, Jr. ("Alagna"), Brian T. Clendenin ("Clendenin"), Steven Singer ("Singer"), Joseph Duarte ("Duarte"), and Abner Zalaznick ("Zalaznick") hereinafter collectively referred to as "Respondents": Marc J. Ross, Esq., Sichenzia Ross Friedman Ference, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 10, 2003.

Claimant's Opposition to Motion to Dismiss and Answer to Counterclaims filed on or about: May 23, 2003.

Claimant signed the Uniform Submission Agreement: January 8, 2003.

Joint Statement of Answer, Motion to Dismiss, and Counterclaim filed by Respondents on or about: March 17, 2003.

Respondent Joseph Gunnar signed the Uniform Submission Agreement: January 23, 2003.

Respondent Alagna signed the Uniform Submission Agreement: January 23, 2003.

Respondent Clendenin signed the Uniform Submission Agreement: January 23, 2003.

Respondent Singer signed the Uniform Submission Agreement: February 4, 2003.

Respondent Duarte signed the Uniform Submission Agreement: February 4, 2003.

Respondent Zalaznick signed the Uniform Submission Agreement: January 24, 2003.

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### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract and fraud. Unless specifically admitted in his Opposition to Motion to Dismiss and Answer to Counterclaims, Claimant denied the allegations made in the Counterclaim.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In its Counterclaim, Joseph Gunnar asserted the following causes of action: misrepresentation and fraud.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$250,000.00, plus interest; compensatory damages in the amount of \$1,000,000.00, plus interest; punitive damages in the amount of \$1,000,000.00; costs and attorneys' fees; and any further relief it deems just and proper. In his Opposition to Motion to Dismiss and Answer to Counterclaims, Claimant requested that the motion be denied in its entirety.

Respondents requested an award granting the motion to dismiss and dismissing the Statement of Claim in its entirety, with prejudice; an award in favor of Joseph Gunnar for compensatory damages in the amount of \$100,000.00; and 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 and the post hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Joseph Gunnar is liable for and shall pay to Claimant compensatory damages in the amount of \$240,769.24 plus interest at the rate of nine percent per annum from July 23, 2002 until November 15, 2004.
2. Any and all relief not specifically addressed herein, including punitive damages, is 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:

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Initial claim filing fee	= \$ 500.00
Counterclaim filing fee	= \$1,000.00

**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 persons at the time of the events giving rise to the dispute. Accordingly, Joseph Gunnar & Co. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$5,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

April 7-8, 2004, adjournment by Claimant	= Waived
May 18-19, 2004, adjournment by Claimant	= Waived
July 8-9, and August 16, 2004, adjournment by Respondents	= Waived

**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 sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: April 19, 2004 1 session	
April 23, 2004 1 session	

Three (3) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 3,600.00
Pre-hearing conferences: October 7, 2003 1 session	
January 28, 2004 1 session	
August 2, 2004 1 session	

Eight (8) Hearing sessions @ \$1,200.00	= \$ 9,600.00
Hearing Dates: November 8, 2004 2 sessions	
November 9, 2004 2 sessions	
November 10, 2004 2 sessions	
November 12, 2004 2 sessions	

<b>Total Forum Fees</b>	<b>= \$14,100.00</b>
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1. The Panel has assessed \$14,100.00 of the forum fees to Respondent Joseph Gunnar.

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**Fee Summary****1. Claimant is solely liable for:**

<u>Initial Filing Fee</u>	= \$ 500.00
<u>Total Fees</u>	= \$ 500.00
<u>Less payments</u>	= \$ 1,800.00
<u>Refund Due Claimant</u>	= \$ 1,300.00

**2. Respondent Joseph Gunnar is solely liable for:**

<u>Counterclaim Filing Fee</u>	= \$ 1,000.00
<u>Member Fees</u>	= \$ 8,550.00
<u>Forum Fees</u>	= \$14,100.00
<u>Total Fees</u>	= \$23,650.00
<u>Less payments</u>	= \$10,300.00
<u>Balance Due NASD Dispute Resolution</u>	= \$13,350.00

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

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**ARBITRATION PANEL**

Paul S. Biederman	-	Public Arbitrator, Presiding Chairperson
Theresa R. Joyner, Esq.	-	Public Arbitrator
Jettie K. Thomas, Esq.	-	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.

  
Paul S. Biederman  
Public Arbitrator, Presiding Chairperson

12/1/04  
Signature Date

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Theresa R. Joyner, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Jettie K. Thomas, Esq.  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

December 2, 2004  
Date of Service (For NASD Dispute Resolution use only)

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Signature Date

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Theresa R. Joyner, Esq.  
Public Arbitrator

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Signature Date

  
Jettie K. Thomas, Esq.  
Non-Public Arbitrator

12/01/2004  
Signature Date

December 2, 2004  
Date of Service (For NASD Dispute Resolution use only)

FROM :

FAX NO. :7186431382

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Paul S. Biederman  
Theresa R. Joyner, Esq.  
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- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

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