

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Irene Bell Keenan, Conservator for the benefit of Elizabeth Wattenberger, Claimant v. Joseph Gunnar & Company, Ira Berkowitz, and Philip Fazio, Respondents

Case Number: 03-05536

Hearing Site: San Francisco, California

Nature of the Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

Mark H. Pierce, Esq.
Olson & Pierce
San Jose, California

For Respondents:

John E. Lawlor, Esq.
Law Offices of John E.
Lawlor
Mineola, New York

CASE INFORMATION

Statement of Claim filed: July 25, 2003

Amended Statement of Claim filed: January 10, 2005

Claimant's Uniform Submission Agreement signed: July 23, 2003

Joint Statement of Answer filed by Respondents: October 17, 2003

Joint Answer to the Amended Statement of Claim filed by Respondents: January 28, 2005

Respondent Joseph Gunnar & Company's Uniform Submission Agreement signed: August 25, 2003

Respondent Ira Berkowitz' Uniform Submission Agreement signed: September 9, 2003

Respondent Philip Fazio's Uniform Submission Agreement signed: September 11, 2003

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CASE SUMMARY

Claimant alleged churning, failure to supervise, unsuitability, and breach of fiduciary duty. Claimant's allegations involved various unspecified securities. In the Amended Statement of Claim, Claimant added a notice of rescission of a release referenced in Respondents' Answer.

Respondents denied the allegations of wrongdoing set forth in Claimant's Statements of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$200,000.00 in compensatory damages, disgorgement, and interest.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On December 3, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On December 6, 2004, Claimant filed a Motion to Amend Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(c). The Panel granted the unopposed motion on January 5, 2005.

On June 22, 2005, Respondents notified NASD that the settlement reached by the parties in this matter was approved by a California court. On that same date, Respondents submitted the parties' stipulated request for an Award recommending expungement of all references to this matter from Respondents Ira Berkowitz's and Philip Fazio's CRD records. The Panel granted the parties' stipulated request for an expungement recommendation.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

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AWARD

After considering the parties' Stipulation, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondents Ira Berkowitz's and Philip Fazio's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondents Ira Berkowitz and Philip Fazio must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Joseph Gunnar & Company is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
<u>Total Member Fees</u>	<u>= \$5,200.00</u>

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Adjournment Fees

The following adjournment fees are assessed:

December 1-3, 2004 Hearing Dates, adjournment requested
by Respondents = \$ 1,125.00

March 14-18, 2005 Hearing Dates, adjournment requested
by all parties = \$ 1,125.00

1. The panel assessed \$1,125.00 of the adjournment fee to Claimant.
2. The panel assessed \$1,125.00 of the adjournment fee jointly and severally to Respondents.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

March 14-18, 2005 Hearing Dates, adjournment requested
by all parties = \$ 300.00

1. The panel assessed \$150.00 of the cancellation fee to Claimant.
2. The panel assessed \$150.00 of the cancellation fee jointly and severally to Respondents

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

(3) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session = \$ 1,350.00
Pre-hearing conferences: August 12, 2004 1 session
September 3, 2004 1 session
September 9, 2004 1 session

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-hearing conference: April 23, 2004 1 session

Total Forum Fees = \$ 2,475.00

1. The Panel assessed \$1,237.50 of the forum fees to Claimant.
2. The Panel assessed \$1,237.50 of the forum fees jointly and severally to Respondents.

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Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Adjournment Fees	= \$ 1,125.00
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 1,237.50
Total Fees	= \$ 2,812.50
Less payments	= \$ (2,887.50)
Refund Due Claimant	= \$ (75.00)

2. Respondent Joseph Gunnar & Company is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Less payments	= \$ (5,200.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Joseph Gunnar & Company, Ira Berkowitz, and Philip Pazio are charged jointly and severally with the following fees and costs:

Adjournment Fees	= \$ 1,125.00
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 1,237.50
Total Fees	= \$ 2,512.50
Less payments	= \$ (1,462.50)
Balance Due NASD Dispute Resolution	= \$ 1,050.00

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

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ARBITRATION PANEL

Patricia Shuler Schimbor	-	Public Arbitrator, Presiding Chair
Beverly A. Fleming	-	Public Arbitrator
Mark Aaron Jones	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Patricia Shuler Schimbor
Chair, Public Arbitrator

Signature Date



Beverly A. Fleming
Public Arbitrator

7/7/05

Signature Date

Mark Aaron Jones
Non-Public Arbitrator

Signature Date

7/8/05

Date of Service

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Beverly A. Fleming	-	Public Arbitrator
Mark Aaron Jones	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Patricia Shuler Schimbor
Patricia Shuler Schimbor
Chair, Public Arbitrator

July 7, 2005
Signature/Date

Beverly A. Fleming
Public Arbitrator

Signature/Date

Mark Aaron Jones
Non-Public Arbitrator

Signature/Date

7/8/05
Date of Service

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Chair, Public Arbitrator

Signature Date

Beverly A. Fleming
Public Arbitrator

Signature Date



Mark Aaron Jones
Non-Public Arbitrator

7/7/05
Signature Date

7/8/05
Date of Service