

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Joseph Gunnar & Co., LLC

Case Number: 20-00151

vs.

Respondents

Worden Capital Management LLC
Matthew Gates
Brandon Pflaum
Cesar Pozo
Miguel Cabarcas

Hearing Site: New York, New York

vs.

Third-Party Respondent

Joseph Alagna

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

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

REPRESENTATION OF PARTIES

For Claimant Joseph Gunnar & Co., LLC (“Gunnar”): John E. Lawlor, Esq., The Law Offices of John E. Lawlor, Esq., Mineola, New York.

For Respondents Worden Capital Management LLC, Matthew Gates, Brandon Pflaum, Cesar Pozo, and Miguel Cabarcas: Richard Roth, Esq., and Lance Willoughby, Esq., The Roth Law Firm, PLLC, New York, New York.

For Third-Party Respondent Joseph Alagna: John E. Lawlor, Esq., The Law Offices of John E. Lawlor, Esq., Mineola, New York.

CASE INFORMATION

Statement of Claim filed on or about: January 15, 2020.

Joseph Gunnar & Co., LLC signed the Submission Agreement: January 15, 2020.

Joint Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondents on or about: May 4, 2020.

Amended Joint Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondents on or about: May 18, 2020.

Second Amended Joint Statement of Answer, Counterclaim, and Third-Party Claim filed by Respondents on or about: August 3, 2021.

Worden Capital Management LLC did not sign the Submission Agreement.

Matthew Gates did not sign the Submission Agreement.

Brandon Pflaum did not sign the Submission Agreement.

Cesar Pozo did not sign the Submission Agreement.

Miguel Cabarcas did not sign the Submission Agreement.

Joint Statement of Answer to the Amended Joint Counterclaim and Third-Party Claim filed by Counterclaim Respondent Joseph Gunnar & Co., LLC and Third-Party Respondent Joseph Alagna on or about: June 18, 2020.

Joint Statement of Answer to the Second Amended Joint Counterclaim and Third-Party Claim filed by Counterclaim Respondent Joseph Gunnar & Co., LLC and Third-Party Respondent Joseph Alagna on or about: August 31, 2021.

Joseph Alagna signed the submission agreement: June 18, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract; tortious interference with contract; breach of fiduciary duties; aiding and abetting breach of fiduciary duties; unfair competition; misappropriation of trade secrets; slander, libel and libel *per se*.

Unless specifically admitted in the Second Amended Statement of Answer, Counterclaim, and Third-Party Claim, Respondents denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and asserted the following causes of action: fraudulent misrepresentation; fraud; defamation *per se*; tortious interference with prospective business relations; *prima facie* tort; breach of contract; declaratory judgement; equitable accounting; violation of New York Labor Laws; and quantum meruit.

Unless specifically admitted in the Statement of Answer to the Second Amended Counterclaim and Third-Party Claim, Counterclaim Respondent Joseph Gunnar & Co., LLC and Third-Party Respondent Joseph Alagna denied the allegations made in the Amended Joint Counterclaim and Third-Party Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested (a) on its First Cause of Action an order or award (i) preliminarily and permanently enjoining the Individual Respondents Matthew Gates, Brandon Pflaum, Cesar Pozo, and Miguel Cabarcas, either individually or in concert with any agent, representative, colleague or employee from Worden Capital Management, LLC ("Worden"), from soliciting, enticing or encouraging, directly or indirectly, any current employee, broker, independent contractor, representative or agent of Gunnar from working with them or soliciting the current employee, broker, representative or agent of Gunnar to leave the company for any competitor of Gunnar; (ii) preliminarily and permanently enjoining Individual Respondents

Matthew Gates, Brandon Pflaum, Cesar Pozo, and Miguel Cabarcas, either individually or in concert with any agent, representative, colleague or employee of Worden, from directly or indirectly using any Confidential Information to solicit for business, directly or indirectly, any customer, prospect or referral whose name became known to the Individual Respondents while an agent or associated person of Gunnar; (iii) preliminarily and permanently enjoining Respondent Worden Capital Management, LLC and its employees, agents and representatives from inducing, encouraging, aiding or abetting the Individual Respondents to do any of the things identified in paragraphs (a) and (b); and (iv) preliminarily and permanently enjoining Respondents and any person acting in concert with them, from using or disclosing any of Claimant's trade secrets, confidential information, records, and/or information; (b) on its Second Cause of Action an award of compensatory damages in an amount to be proved, but not less than \$1,000,000.00; (c) on its Third Cause of Action an award of compensatory damages in an amount to be proved, but not less than \$1,000,000.00; (d) on its Fourth Cause of Action an award of compensatory damages in an amount to be proved, but not less than \$1,000,000.00; (e) on its Fifth Cause of Action an award of compensatory damages in an amount to be proved, but not less than \$1,000,000.00; (f) on its Sixth Cause of Action an award of compensatory damages in an amount to be proved, but not less than \$1,000,000.00; (g) on its Seventh Cause of Action an award of compensatory damages in an amount to be proved, but not less than \$1,000,000.00; and (h) on all causes, for such other, further and different relief as to the Panel deems appropriate.

In the Second Amended Statement of Answer, Counterclaim, and Third-Party Claim, Respondents requested dismissal of the Statement of Claim in its entirety; compensatory damages in an amount in excess of \$5,000,000.00; judgment in favor of Counterclaimants/ Third-Party Claimants for each and every Counterclaim and Third-Party Claim as set forth herein, together with costs, disbursements, and reasonable attorneys' fees as a result of Joseph Gunnar & Co., LLC and Joseph Alagna's egregiously malicious conduct; expungement of the wrongful statements on each of the Counterclaim Claimants/ Third-Party Claimants' Forms U-5 and correction that delineates that they voluntarily resigned from their employment; and such other and further relief this Panel deems just and proper.

In the Statement of Answer to the Second Amended Counterclaim and Third-Party Claim, Counterclaim Respondent Joseph Gunnar & Co., LLC and Third-Party Respondent Joseph Alagna requested that the Counterclaim and Third-Party Claim be dismissed; that all relief requested in the Statement of Claim be granted; and for such other, further, and different relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

Respondents Worden Capital Management LLC, Matthew Gates, Brandon Pflaum, Cesar Pozo, and Miguel Cabarcas did not file properly executed Submission Agreements but are required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and, having answered the claim, appeared, and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

At the start of the evidentiary hearing on December 1, 2021, Respondents advised the Panel that the parties had reached a settlement except for the Respondents' expungement request. On December 8, 2021, Claimant filed a notice of settlement. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim, the Second Amended Counterclaim and Third-Party Claim, except for the expungement request.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of the Reason for Termination and Termination Explanation in Section 3 of Matthew Gates' (CRD Number 4727945) Form U5 filed by Joseph Gunnar & Co., LLC (CRD Number 24795) on January 13, 2020 and maintained by the Central Registration Depository ("CRD"). The Reason for Termination shall be changed to "Voluntary." The Termination Explanation shall be deleted in its entirety. This directive shall apply to all references to the Reason for Termination and Termination Explanation.

The Panel further recommends the expungement of all references to Occurrence Numbers 2058746 and 2058747 maintained by the CRD for Matthew Gates. Any "Yes" answers should be changed to "No," as applicable.

The Panel recommends expungement based on the defamatory nature of the information. The above recommendations are made with the understanding that the registration records are not automatically amended. Matthew Gates must forward a copy of this Award to FINRA's Credentialing, Registration, Education and Disclosure Department for review.

2. The Panel recommends the expungement of the Reason for Termination and Termination Explanation in Section 3 of Brandon Pflaum's (CRD Number 5762933) Form U5 filed by Joseph Gunnar & Co., LLC (CRD Number 24795) on January 13, 2020 and maintained by the CRD. The Reason for Termination shall be changed to "Voluntary." The Termination Explanation shall be deleted in its entirety. This directive shall apply to all references to the Reason for Termination and Termination Explanation.

The Panel further recommends the expungement of all references to Occurrence Numbers 2058749 and 2058750 maintained by the CRD for Brandon Pflaum. Any "Yes" answers should be changed to "No," as applicable.

The Panel recommends expungement based on the defamatory nature of the information. The above recommendations are made with the understanding that the registration records are not automatically amended. Brandon Pflaum must forward a copy of this Award to FINRA's Credentialing, Registration, Education and Disclosure Department for review.

3. The Panel recommends the expungement of the Reason for Termination and Termination Explanation in Section 3 of Cesar Pozo’s (CRD Number 5802115) Form U5 filed by Joseph Gunnar & Co., LLC (CRD Number 24795) on January 13, 2020 and maintained by the CRD. The Reason for Termination shall be changed to “Voluntary.” The Termination Explanation shall be deleted in its entirety. This directive shall apply to all references to the Reason for Termination and Termination Explanation.

The Panel further recommends the expungement of all references to Occurrence Numbers 2058767 and 2058768 maintained by the CRD for Cesar Pozo. Any “Yes” answers should be changed to “No,” as applicable.

The Panel recommends expungement based on the defamatory nature of the information. The above recommendations are made with the understanding that the registration records are not automatically amended. Cesar Pozo must forward a copy of this Award to FINRA’s Credentialing, Registration, Education and Disclosure Department for review.

4. The Panel recommends the expungement of the Reason for Termination and Termination Explanation in Section 3 of Miguel Cabarcas’ (CRD Number 5771333) Form U5 filed by Joseph Gunnar & Co., LLC (CRD Number 24795) on January 13, 2020 and maintained by the CRD. The Reason for Termination shall be changed to “Voluntary.” The Termination Explanation shall be deleted in its entirety. This directive shall apply to all references to the Reason for Termination and Termination Explanation.

The Panel further recommends the expungement of all references to Occurrence Numbers 2058744 and 2058745 maintained by the CRD for Miguel Cabarcas. Any “Yes” answers should be changed to “No,” as applicable.

The Panel recommends expungement based on the defamatory nature of the information. The above recommendations are made with the understanding that the registration records are not automatically amended. Miguel Cabarcas must forward a copy of this Award to FINRA’s Credentialing, Registration, Education and Disclosure Department for review.

FEES

Pursuant to the Code of Arbitration Procedure (“Code”), the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee	= \$	3,400.00
Counterclaim Filing Fee	= \$	4,000.00

**The filing fee is made up of a non-refundable and a refundable portion.*

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, as parties, Joseph Gunnar & Co., LLC and Worden Capital Management LLC are each assessed the following:

Member Surcharge	= \$	3,025.00
Member Process Fee	= \$	6,800.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

January 25-27, February 2-4, 2021, postponement requested by the parties		WAIVED
December 9,10, and 14, 2021 postponement requested by Respondents	= \$	1,500.00
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Total Postponement Fees	= \$	1,500.00

The Panel has assessed the total postponement fees jointly and severally to Respondents.

Last-Minute Cancellation Fees

Fees apply when a hearing on the merits is cancelled within ten calendar days before the start of a scheduled hearing session:

December 9,10, and 14, 2021 postponement requested by Respondents	= \$	1,800.00
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Total Last-Minute Cancellation Fees	= \$	1,800.00

The Panel has assessed the total last-minute cancellation fees jointly and severally to Respondents.

Contested Motion for Issuance of Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) decision on a contested motion for the issuance of a subpoena with one (1) Arbitrator @ \$200.00	= \$	200.00
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Total Contested Motion for Issuance of Subpoena Fees	= \$	200.00

The Panel has assessed the total contested motion for issuance of subpoena fees to Claimant.

Hearing Session Fees and Assessments

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

Four (4) pre-hearing sessions with the Panel @ \$1,500.00/session	= \$	6,000.00
Pre-Hearing Conferences:		
May 26, 2020	1 session	
November 9, 2020	1 session	
November 12, 2020	1 session	
August 18, 2021	1 session	
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Two (2) hearing sessions @ \$1,500.00/session	= \$	3,000.00
Hearings:		
December 1, 2021	1 session	
December 13, 2021	1 session	
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Total Hearing Session Fees	= \$	9,000.00

The Panel has assessed the total hearing session fees to Claimant.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

Paul C. Kurland	-	Public Arbitrator, Presiding Chairperson
Jeanne M. Keefe	-	Public Arbitrator
Ilene Barbara Zatkan-Butler	-	Non-Public Arbitrator

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.

Concurring Arbitrators' Signatures

Paul C. Kurland

Paul C. Kurland
Public Arbitrator, Presiding Chairperson

01/21/2022

Signature Date

Jeanne M. Keefe

Jeanne M. Keefe
Public Arbitrator

01/19/2022

Signature Date

Ilene Barbara Zatkan-Butler

Ilene Barbara Zatkan-Butler
Non-Public Arbitrator

01/19/2022

Signature Date

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

January 25, 2022

Date of Service (For FINRA Dispute Resolution Services use only)