

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Roger Alexander Monteforte

Case Number: 20-02713

vs.

Respondents

Joseph Gunnar & Co. LLC  
Brauer & Associates, Inc.

Hearing Site: New York, New York

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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: Associated Person vs. Members

**REPRESENTATION OF PARTIES**

Claimant Roger Alexander Monteforte: Tosh Grebenik, Esq., Judex Law, LLC, Broomfield, Colorado.

Respondent Joseph Gunnar & Co. LLC: Peter Bon Viso, Esq., Joseph Gunnar & Co., LLC, New York, New York.

Respondent Brauer & Associates, Inc. did not enter an appearance in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: August 20, 2020.

Roger Alexander Monteforte signed the Submission Agreement: August 20, 2020.

Statement of Answer filed by Respondent Joseph Gunnar & Co. LLC on or about: October 15, 2020.

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

Respondent Brauer & Associates, Inc. did not submit a Statement of Answer or sign the Submission Agreement.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent Joseph Gunnar & Co. LLC took no position on Claimant's expungement request relating to Occurrence Number 1245039.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Numbers 333978 and 1245039; and compensatory damages in the amount of \$1.00 from each Respondent.

In the Statement of Answer, Respondent Joseph Gunnar & Co. LLC requested that the Arbitrator deny Claimant's claim for damages, and assess forum fees and costs against Claimant.

At the hearing, Claimant withdrew the request for \$1.00 in damages from each Respondent.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

Respondent Brauer & Associates, Inc. did not file a Statement of Answer or properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Arbitrator on all issues submitted.

On August 4, 2021, Claimant advised that the customers in Occurrence Numbers 333978 and 1245039 ("customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on August 5, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondents Joseph Gunnar & Co. LLC, and Brauer & Associates, Inc. did not participate in the expungement hearing.

The customers in Occurrence Numbers 333978 and 1245039 also did not participate in the expungement hearing. The Arbitrator found that the customers in Occurrence Numbers 333978 and 1245039 had notice of the expungement request and hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrences in the CRD.

The Arbitrator reviewed the settlement documentation related to Occurrence Number 1245039, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that although the Settlement Agreement indicated that it was conditioned on the customers not opposing the request for expungement, it was in 2005, long before the current rule was adopted in 2014. Claimant did not contribute to the settlement. Under the circumstances, expungement of Occurrence Number 1245039 is justified.

The settlement documentation relating to Occurrence Number 333978 was not available for review due to the age of the complaint. The Claimant paid the settlement relating to Occurrence Number 333978 to avoid the cost and expense of continuing the arbitration proceedings. However, Claimant testified that not opposing expungement was not a condition to the settlement. Sufficient evidence and testimony was provided during the hearing to demonstrate that the trades the customer complained about were consistent with the customer's risk tolerance and portfolio objectives, and were made pursuant to the explicit direction of the customer. The cost of continuing to defend the claim was prohibitive to Claimant and the settlement did not include any admission of wrongdoing. Under the circumstances, expungement of Occurrence Number 333978 is justified.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the pleadings, exhibits, Claimant's testimony, Claimant's BrokerCheck® Report, and the settlement agreement for occurrence number 1245039.

### **AWARD**

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

1. The Arbitrator recommends the expungement of all references to Occurrence Number 333978 from registration records maintained by the CRD for Claimant Roger Alexander Monteforte (CRD Number 2620003) with the understanding that, pursuant to Notice to Members 04-16, Claimant Roger Alexander Monteforte must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and the claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

The customer in this matter was an experienced, sophisticated and accredited investor who was approved for options trading. His portfolio objectives were speculation and trading profits. He had experience in options and mergers. His accounts were non-discretionary, meaning he had to specifically direct and authorize each transaction. All trade directions were verbal and made on the day of the trade. He was an extremely active trader and he and Claimant spoke several times per week and regularly undertook multiple weekly transactions. Each transaction also triggered written confirmation of all trades with trade details. In addition, the customer received monthly account statements

of all transactions, with the account value, and monthly and annual statements which demonstrated account fluctuation. All the customer's trades were speculative stocks which were in line with his stated investment objectives and activity. The dispute arose out of the purchase of two speculative stocks. An investigation by the dealer into the complaint found that customer had other accounts with other broker dealers in which his risk and trading activity was similar to the high-risk tolerance demonstrated with Claimant. The purchase of the stocks was not unsuitable as the securities were consistent with the customer's objectives and risk tolerance, which was similar to his objectives and risk tolerance at other broker dealers. The customer also demonstrated similar trading patterns with other accounts at other brokers. In addition, all his accounts were non-discretionary, and the customer specifically directed and authorized each transaction, which was then confirmed in writing. Finally, the accounts were doing well and customer was generally pleased, making complaints of only two transactions of the numerous transactions made. The customer had opportunities to raise concerns with the purchases when they occurred and when the market was increasing, but he never did. Instead the customer only complained after the two securities had significantly declined in value and seven months after Claimant left the broker dealer. Claimant only followed the customer's directions to purchase which was consistent with his objectives, preferences, and risk tolerance. The arbitration was settled and Claimant paid in order to avoid the expense of continuing the arbitration proceedings. Keeping this Occurrence on the Claimant's BrokerCheck Report serves no meaningful investor protection or regulatory value based upon the facts and circumstances presented during the hearing and the evidence presented in support.

2. The Arbitrator recommends the expungement of all references to Occurrence Number 1245039 from registration records maintained by the CRD for Claimant Roger Alexander Monteforte (CRD Number 2620003) with the understanding that, pursuant to Notice to Members 04-16, Claimant Roger Alexander Monteforte must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

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The Arbitrator has made the above Rule 2080 findings based on the following reasons:

The matters at issue in this occurrence do not pertain to any acts or omissions undertaken by Claimant, who did not make any trades or take any action or fail to take any action on behalf of the customers in the underlying matter. Instead, another broker was the broker involved in the alleged transactions. The subject accounts were all non-discretionary accounts, and therefore, the customers specifically directed and authorized each transaction made on the accounts. Each transaction was documented by written confirmation to the customers following the transaction, and monthly and annual statements were also provided. Claimant did not control the accounts or make transactions on the accounts complained of. The Claimant did not make the objectionable trades, and he had no authority and did not make any of the questionable trades complained of, which was not disputed. The customers' complaint did not detail any particular trades or action taken by Claimant that were fraudulent and the complaint was filed over four years after the losses occurred, due to the dotcom bubble downturn, and over three years after Claimant left his employment with the broker. The matter was settled and paid entirely by the other broker, with no input, involvement, consultation or contribution from Claimant. Keeping this Occurrence Number on the Claimant's BrokerCheck Report serve's no meaningful investor protection or regulatory value based upon the facts and circumstances presented during the hearing and the evidence presented in support.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial Claim Filing Fee = \$ 50.00

*\*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 person at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents Brauer & Associates, Inc. and Joseph Gunner & Co. LLC are each assessed the following:

Member Surcharge = \$ 150.00

#### **Postponement Fees**

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

June 22, 2021, postponement requested by Claimant = \$ 50.00

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Total Postponement Fees = \$ 50.00

The Arbitrator has assessed the total postponement fees to Claimant.

**Hearing Session Fees and Assessments**

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

One (1) pre-hearing session with a single Arbitrator @ \$50.00/session	= \$	50.00
Pre-Hearing Conference: December 17, 2020	1 session	
One (1) hearing session on expungement request @ \$50.00/session	= \$	50.00
Hearing: August 5, 2021	1 session	
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Total Hearing Session Fees	= \$	100.00

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

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

**ARBITRATOR**

Susan Romano

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Sole 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.

**Arbitrator's Signature**

***Susan Romano***

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Susan Romano  
Sole Public Arbitrator

**08/18/2021**

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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.

August 19, 2021

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