

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Henry Ross (Claimant) v. David Lerner Associates, Inc. and Douglas Roy Albert
(Respondents)

Case Number: 02-07235

Hearing Site: New York, New York

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

REPRESENTATION OF PARTIES

Claimant Henry Ross ("Ross") hereinafter referred to as "Claimant": Martin P. Unger, Esq., Certilman Balin Adler & Hyman, LLP, East Meadow, NY.

Respondents David Lerner Associates, Inc. ("David Lerner") and Douglas Roy Albert ("Albert") hereinafter collectively referred to as "Respondents": Joseph C. Pickard, Esq., David Lerner Associates, Inc., Syosset, NY.

CASE INFORMATION

Statement of Claim filed on or about: November 26, 2002.

Claimant signed the Uniform Submission Agreement: November 20, 2002.

Joint Statement of Answer filed by Respondents on or about: January 24, 2003.

David Lerner signed the Uniform Submission Agreement: January 23, 2003.

Albert signed the Uniform Submission Agreement: January 23, 2003.

CASE SUMMARY

Claimant asserted the following causes of action: suitability and misrepresentation.

Claimant's claim involved deferred variable annuity products.

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

RELIEF REQUESTED

Claimant requested damages in an amount of at least \$362,000.00; punitive damages in an amount exceeding \$1 million should also be awarded; Claimant also seeks attorneys' fees, interest on the award from March 1998 and that the costs of this arbitration be assessed against the Respondents, jointly and severally.

Respondents requested that the Claimant's Statement of Claim be, in all respects, dismissed and that costs and disbursements be assessed against the Claimant.

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, and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination. The Panel is persuaded that the two variable annuity contracts were not suitable for the Claimant who was over 70 years of age, and that there was no meeting of the minds between the parties as to the nature of the investments. Accordingly, the Panel makes the following Award:

1. Respondents are jointly and severally liable for and shall pay to Claimant compensatory damages in the amount of \$77,000.00 inclusive of interest from the date of the purchases of the first and second variable annuity contracts through October 30, 2003.
2. Respondents are jointly and severally liable for and shall pay to Claimant interest at the rate of 6% per annum beginning October 30, 2003 until the date the award is paid.
3. 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:

Initial claim filing fee	= \$500.00
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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 person at the time of the events giving rise to the dispute. Accordingly, David Lerner Associates, Inc. is a party.

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

Hearing process fee = \$5,000.00

Forum Fees and Assessments

The Arbitrator 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 Panel @ \$1,200.00 = \$2,400.00

Pre-hearing conferences: June 2, 2003 1 session
October 22, 2003 1 session

Six (6) Hearing sessions @ \$1,200.00 = \$7,200.00

Hearing Dates: October 28, 2003 2 sessions
October 29, 2003 2 sessions
October 30, 2003 2 sessions

Total Forum Fees = \$9,600.00

1. The Panel has assessed \$2,400.00 of the forum fees against Claimant.
2. The Panel has assessed \$7,200.00 of the forum fees jointly and severally against Respondents.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$2,400.00
Total Fees	= \$2,900.00
Less payments	= \$1,700.00
Balance Due NASD Dispute Resolution	= \$1,200.00

2. David Lerner is solely liable for:

Member Fees	= \$8,550.00
Total Fees	= \$8,550.00
Less payments	= \$8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

Forum Fees	= \$7,200.00
Total Fees	= \$7,200.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$7,200.00

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

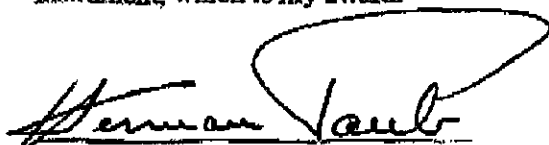
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ARBITRATION PANEL

Herman Taub, Esq.	-	Public Arbitrator, Presiding Chair
Abigail J. Pessen, Esq.	-	Public Arbitrator
A. George Saks, 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.



Herman Taub, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Abigail J. Pessen, Esq.
Public Arbitrator

Signature Date

A. George Saks, Esq.
Non-Public Arbitrator

Signature Date

November 13, 2003

Date of Service (For NASD Dispute Resolution use only)

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ARBITRATION PANEL

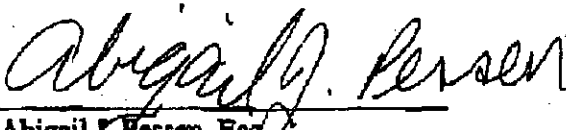
Herman Taub, Esq.	-	Public Arbitrator, Presiding Chair
Abigail J. Pessen, Esq.	-	Public Arbitrator
A. George Saks, Esq.	-	Non-Public Arbitrator

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.

Herman Taub, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Abigail J. Pessen, Esq.
Public Arbitrator

Signature Date

A. George Saks, Esq.
Non-Public Arbitrator

Signature Date

November 13, 2003
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