

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

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In the Matter of the Arbitration Between:

Carol Spinelli (Claimant) vs. David Lerner Associates (Respondent)

Case Number: 05-00359

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant Carol Spinelli ("Spinelli") hereinafter referred to as "Claimant": Anthony J. Hom, Esq., Attorney at Law, New York, NY.

Respondent David Lerner Associates ("David Lerner") hereinafter referred to as "Respondent": Joseph C. Pickard, Esq., David Lerner Associates, Inc., Syosset, NY.

**CASE INFORMATION**

Statement of Claim filed: January 20, 2005.

Claimant signed the Uniform Submission Agreement: January 19, 2005.

Statement of Answer filed by Respondent: March 15, 2005.

Respondent signed the Uniform Submission Agreement: March 15, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized transactions, unsuitable investments, failure to supervise, breach of contract, breach of fiduciary duty and negligence. The causes of action relate to municipal bonds.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$48,000.00 plus interest for the date the losses were incurred to the date of this arbitration.

Respondent requested that 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, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$10,000.00.
2. Any and all relief not specifically addressed herein 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	= \$ 175.00
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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 event giving rise to the dispute. Accordingly, David Lerner Associates, Inc. is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

One (1) Pre-hearing session with Panel @ \$600.00	= \$ 600.00
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Pre-hearing conference:	June 3, 2005	1 session
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Six (6) Hearing sessions @ \$600.00/per session	= \$3,600.00
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Hearing Date(s):	February 15, 2006	2 sessions
	February 16, 2006	2 sessions
	March 8, 2006	2 sessions

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Total Forum Fees	= \$4,200.00
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1. The Panel has assessed \$4,200.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 175.00
<u>Total Fees</u>	= \$ 175.00
<u>Less payments</u>	= \$ 775.00
<u>Refund Due Claimant</u>	= \$ 600.00

2. Respondent is solely liable for:

<u>Member Fees</u>	= \$2,625.00
<u>Forum Fees</u>	= \$4,200.00
<u>Total Fees</u>	= \$6,825.00
<u>Less payments</u>	= \$2,625.00
<u>Balance Due NASD Dispute Resolution</u>	= \$4,200.00

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

**ARBITRATION PANEL**

James J. Powers, Esq.	-	Public Arbitrator, Presiding Chairperson
Jan Myers Cook, Esq.	-	Public Arbitrator
Eugene D. Brody	-	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 is which is my award.

**Concurring Arbitrators' Signatures**

  
James J. Powers  
Public Arbitrator, Presiding Chairperson

3/13/06  
Signature Date

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Jan Myers Cook  
Public Arbitrator

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

\_\_\_\_\_  
Eugene D. Brody  
Non-Public Arbitrator

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

March 15, 2006  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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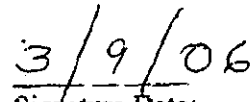
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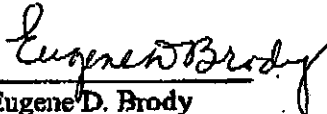
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