

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

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CASE: 05-05608

David Lerner Associates, (Claimant/Counterclaim Respondent) vs. Matthew Troncone,  
(Respondent/Counterclaim Claimant)

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**ATTORNEYS:**

For Claimant/Counterclaim Respondent appeared in-house counsel Steven L. Somani,  
Syosset, NY.

For Respondent/Counterclaim Claimant appeared Michael Kalmus, Esq., of the firm  
Michael Kalmus Attorney at Law, New York, NY.

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**NATURE OF DISPUTE:** Member v. Associated Person

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**DATE FILED:** November 2, 2005

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**CASE SUMMARY:** Claimant/Counterclaim Respondent alleged that  
Respondent/Counterclaim Claimant breached a contract by failing to repay monies  
owed pursuant to the terms of a Promissory Note. Claimant/Counterclaim Respondent  
maintained that due to Respondent/Counterclaim Claimant's actions, the firm suffered a  
financial loss.

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**COUNTERCLAIM SUMMARY:** Respondent/Counterclaim Claimant alleged that  
Claimant/Counterclaim Respondent breached a contract and failed to act in good faith.  
Respondent/Counterclaim Claimant further alleged constructive discharge.  
Respondent/Counterclaim Claimant maintained that due Claimant/Counterclaim  
Respondent's actions, he suffered financial losses.

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**Claim Data**

Claim: \$13,351.67

Specific Performance: Direct Respondent not to  
solicit, for a period of two years from date of  
termination at David Lerner, any of the clients  
whose names became known to him while he  
was associated with David Lerner.

Specific Performance: Direct Respondent to  
return any original records, and purge or destroy  
any computerized, duplicated or copied records  
which he may have caused to be removed from the  
premises of David Lerner.

Filing Fees: Unspecified

Other: Unspecified

**Award Data**

Award: \$.00

Specific Performance: Denied

Specific Performance: Denied

Filing Fees: \$.00

Other: \$.00

**Counterclaim Data**

Claim: \$25,0000  
Attorney Fees: Unspecified  
Filing Fees: Unspecified  
Other: \$3,500.00

**Counterclaim Award Data**

Award: \$.00  
Attorney Fees: \$.00  
Filing Fees: \$425.00  
Other: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of the Claimant/Counterclaim Respondent are dismissed in their entirety. 2) All other relief requests are denied. 3) NASD Dispute Resolution shall retain the \$1,050.00 filing fee that the Claimant/Counterclaim Respondent deposited previously.

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**COUNTERCLAIM AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of the Respondent/Counterclaim Claimant are dismissed in their entirety. 2) All requests for attorney's fees are denied. 3) All other relief requests are denied. 4) NASD Dispute Resolution shall invoice for the \$425.00 filing fee that the Respondent/Counterclaim Claimant should have deposited previously. 5) Claimant/Counterclaim Respondent is liable and shall pay Respondent/Counterclaim Claimant \$425.00 as reimbursement of the filing fee.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Claimant/Counterclaim Respondent has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

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John J. Phelan, Esq.

Sole Non-Public Arbitrator

AFFIRMATION

I, John J. Phelan, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
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John J. Phelan, Esq.

6/29/06  
(Signature Date)

July 5, 2006

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Date of Service (For NASD-DR office use only)