

N.A.S.D. AWARD

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Anthony & Josephine Giordano

vs.

Case #
91-00552Name of RespondentsDavid Lerner Associates
Richard BurackREPRESENTATION

For Claimant: Franklin D. Ornsten, Esq. of Ornsten & Evangelist.

For Respondent: Robert J. Hume, III, Esq. in-house counsel.

CASE INFORMATION

Statement of Claim filed: February 19, 1991.

Claimant signed Submission Agreement on: February 11, 1991.

Joint Statement of Answer filed on: May 6, 1991.

David Lerner Associates, Inc. signed Submission Agreement on: May 02, 1991.

Richard Burack signed Submission Agreement on: May 02, 1991.

HEARING INFORMATION

Hearing Date/Hearing Sessions: September 25, 1991 - Two Sessions.

Hearing Location: New York, New York.

CASE SUMMARY

Claimants, Anthony and Josephine Giordano, allege that Respondent, Richard Burack, advised them to transfer their funds invested in Government securities to junk bond funds which investment was unsuitable in light of Claimants' age, limited income and lack of investment experience. Claimants

further allege that Respondent, David Lerner Associates, Inc. failed to properly supervise Burack.

Respondents deny the allegations of wrongdoing and deny liability. They contend that Claimants wanted to invest in the Franklin AGE High Income Fund and that based the Claimants' present portfolio, Respondents concurred with Claimants to invest \$25,000.00 in that fund. Respondents further contend that Claimant were specifically informed about the nature of the risk involved in the Franklin AGE High Income Fund. Respondents alleges that the additional funds invested in the Fund were done at the Claimants direction despite Respondents' advise not to do so.

RELIEF REQUESTED

Claimants request that this arbitrator award them \$29,503.00 in compensatory damages. Claimants also requested punitive damages but withdrew this request at the hearing.

Respondents request that the claim be denied in its entirety.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, David Lerner Associates, Inc. and Richard Burack, are jointly and severally liable to the Claimants and shall pay them Twenty Thousand Nine Hundred and Ninety One Dollars and Seventy Eight Cents (\$20,991.78);

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed and any amounts previously paid will be applied to the fees assessed.

1. The NASD has received and shall retain the \$500.00 deposit made by the Claimant;
2. Claimant is assessed a non-refundable filing fee of \$100.00;
3. Claimant if further assessed forum fees in the amount of \$300.00 and is due a refund of \$100.00 which shall be paid in accordance with paragraph 4;
4. Respondent, David Lerner Associates, Inc., is assessed \$300.00 in

forum fees. This shall be satisfied upon reimbursing Claimant \$100.00 and remitting the balance, \$200.00, to the NASD.

Fees are payable to the National Association of Securities Dealers, Inc.

SOLE ARBITRATOR

James M. Baumann, Esq.

Public

Arbitrator's Signature



James M. Baumann, Esq.

Date of Decision: _

Dated by the NASD: October 28, 1991