

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Greg W. Barnewold & Florence Carassale

92-02349

Name of Respondents

David Lerner Associates, Inc.
Vantage Securities, Inc.
Clinton Champney

REPRESENTATION

For Claimants: Lynne A. Bizarro, Esq. of the firm of Zodda & Bizzarro located in Sayville, New York.

For Respondent David Lerner Associates, Inc.: Ruthann G. Niosi, Esq. located in New York, New York.

For Respondent Clinton Champney: John E. Lawlor, Esq. located in Garden City, New York.

Respondent Vantage Securities Inc. settled with Claimants prior to the hearing. Therefore, no representative appeared for Vantage Securities, Inc.

CASE INFORMATION

Statement of Claim filed: July 14, 1992.

Claimant's Submission Agreement signed on: July 12, 1992.

Statement of Answer filed by Respondent David Lerner Associates on: October 1, 1992.

Respondent David Lerner Associates's Submission Agreement signed on: October 1, 1992.

Statement of Answer, Counterclaim and Cross-claim filed by Respondent Vantage Securities, Inc. on: October 1, 1992.

Respondent Vantage Securities, Inc.'s Submission Agreement signed on: October 5, 1992.

HEARING INFORMATION

Pre-Hearing Conference: July 20, 1993 / One Session.
September 24, 1993 / One Session.

Hearing Dates / Sessions: April 5, 1995 / Two Sessions.
June 19, 1995 / Two Sessions.

Hearing Location: Offices of the National Association of Securities Dealers located
in New York, New York.

CASE SUMMARY

Claimants alleged that Greg W. Barnewold ("Barnewold") and Florence Carassale ("Carassale") opened an account with David Lerner Associates ("Lerner") in July 1986 and based upon Champney's recommendations, invested in a life insurance policy and a limited partnership venture. Claimants next alleged that in September 1991, Barnewold's account with respect to the limited partnership interest only was transferred to Vantage Securities, Inc. ("Vantage"). Claimants alleged that Lerner and Vantage breached their fiduciary duties owed to Claimants when they recommended and permitted the investment of Claimants' assets in an unsuitable life insurance policy and Real Estate Income Partners III ("REP") a high risk limited partnership venture. Claimants further alleged that they were unsophisticated investors and that Champney assured Barnewold that investing in the limited partnership was a safe and secure investment. Claimants next alleged that Lerner and Vantage breached their duties owed to Claimants when they guaranteed to Barnewold a \$30,000.00 return in six years and a specific quarterly return on the REP investment.

Claimants alleged that Respondents Lerner and Vantage breached their contracts with Barnewold by not handling Barnewold's account and transactions therein in accordance with industry practices and standards and the NASD Rules of Fair Practice.

Claimants alleged that Respondents were negligent in their conduct towards Barnewold and his account and breach their duties and the standard of care owed to Barnewold arising out of the NASD Rules of Fair Practice, industry practices and standard and applicable statutes. Claimants further alleged that Lerner and Vantage's conduct and breach of their duties and standards of care owed to Barnewold was so wanton and reckless as to arise to gross negligence.

Claimants alleged that Respondents used deceptive devices and made misrepresentations of material facts and omitted material facts to induce Barnewold to make transactions in unsuitable

and inappropriate investments.

Claimants alleged that Lerner and Vantage failed to properly supervise their employees, including Champney. Claimants further alleged that Respondents engaged in acts and a course of business which operated as a fraud upon Barnewold in connection with his purchase of a high risk limited partnership interest and thereby violated Rule 10b-5 of the Securities Exchange Act of 1934.

Respondents Lerner and Champney denied each and every allegation of misconduct asserted against them in Claimants' Statement of Claim. Respondents maintained that Champney sold the insurance policy through the Danielson Agency, Inc., which is not a member of the NASD. Respondents further maintained that Barnewold invested \$80,000.00 in the Franklin US Government Securities Fund and that the investments which were recommended were part of a comprehensive plan suited to the Claimants' stated needs for growth, income, and a reasonable degree of safety. Respondents maintained that Champney made no express or implied guarantees of income to be derived from these investments and that Claimants were well aware of all material risks and market value fluctuations. Respondents further maintained that Champney never assured Barnewold that the REP investment was safe and secure and never asserted that the investment would double in value in six years. Respondents maintained that Claimants received account statements for their investments. Respondents also maintained that the investments recommended to Claimants were proper investments for Claimants' investment objectives of growth with some income in reasonably safe investments.

Respondents Lerner and Champney maintained the following affirmative defenses: (1) Claimants had full knowledge of and assumed the risks associated with investing in the securities market; (2) that Claimants authorized and/or ratified all transactions; (3) that the damages sustained by the Claimants were caused solely by the negligence of the Claimants; (4) that Claimants' Statement of Claim failed to state a cause of action; (5) that Claimants failed to mitigate their damages; (6) that any statements or omissions made, if any, by Respondents did not relate to material facts; (7) Claimants' alleged losses were not proximately caused by Respondents; (8) punitive damages are not awardable in New York State; (9) Claimants' claim for attorneys' fees cannot be awarded absent a contractual or statutory basis.

Respondent Vantage denied the allegations contained in Claimants' Statement of Claim. Respondent Vantage alleged in its Counterclaim that Claimants' claim against Vantage was frivolous since all of the transactions which formed the basis of Claimants' claim occurred prior to the transfer of the account to Vantage.

Respondent Vantage further alleged in its Cross-claim against Lerner and Champney that any damages suffered by Claimants would have been caused solely by the actions of Vantage's co-respondents.

RELIEF REQUESTED

Claimants requested:

1. Actual and compensatory damages in excess of \$30,000.00 consisting of in excess of \$16,149.40 in lost principal and in excess of \$15,000.00 in lost income;
2. Interest on the lost principal;
3. Attorneys' fees and costs;
4. Punitive damages equal to three times the actual damages;
5. Any just and further relief as the arbitrators deem wise.

Respondents Lerner and Champney requested:

1. Claimants' Statement of Claim be dismissed in its entirety;
2. Costs of these proceedings be assessed against Claimants.

Respondent Vantage Requested.

1. An award dismissing Claimants' Statement of Claim;
2. Reimbursement of costs, disbursements and reasonable attorney's fees.
3. Damages against Claimants in the amount of \$15,000.00, plus punitive damages on Vantage's Counterclaim.
4. Judgment against Lerner and Champney is such amount as Vantage shall be found to have been responsible to the Claimants.

AWARD

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

1. All claims against Respondents Lerner and Champney are dismissed in their entirety.
2. Each party shall bear their respective costs, including attorneys' fees.
3. All other claims are denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

2 prehearing sessions X \$300 = \$600.

4 hearing sessions X \$750 = \$3,000

Total forum fees = \$3,600.

Hearing session deposit paid by Claimants = \$450.

Net forum fees due = \$3,150.

Forum fees Assessed Against:

Respondent Lerner is assessed the sum of \$3,150 which represents the net forum fees due. Respondent Lerner is liable and shall pay to the NASD the sum of \$3,150.

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

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Concurring Arbitrators' Signatures

Name

Public Chairperson

Allen Kilik, Esq.

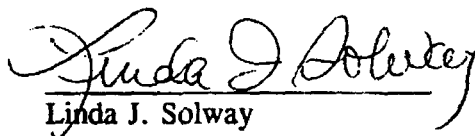
Name

Industry Panelist

Kevin M. Kelly

Name

Public Panelist


Linda J. Solway

Date of Decision: August 11, 1995

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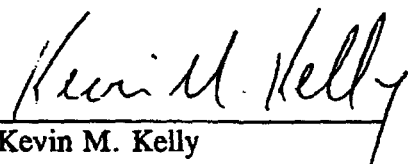
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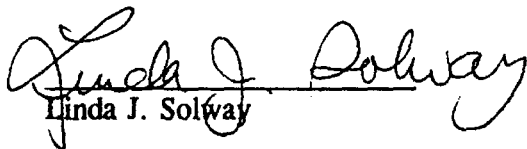
I, Allen Kilik, Esq., do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Allen Kilik, Esq.

I, Kevin Kelly, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Kevin M. Kelly

I, Linda J. Solway, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



Linda J. Solway

Date of Decision: August 11, 1995


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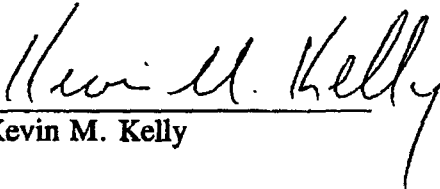
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Allen Kilik, Esq.

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Kevin M. Kelly

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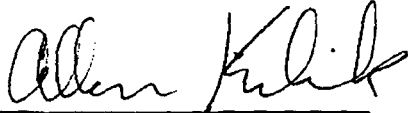
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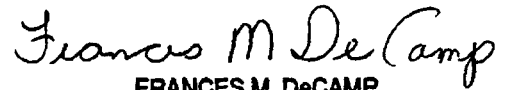
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Allen Kilik, Esq.



FRANCES M. DeCAMP
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Aug. 11, 1997

I, Kevin Kelly, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Kevin M. Kelly

I, Linda J. Solway, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

Linda J. Solway

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