

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Dorothy O'Reilly

92-02728

Name of Respondent(s)

David Lerner Associates

REPRESENTATION

For Claimant, Dorothy O'Reilly ("Claimant"), Roger M. Deitz located in New York, New York.

For Respondent, David Lerner Associates ("Respondent"), Ruthann Niosi located in New York, New York.

CASE INFORMATION

Statement of Claim was filed on August 14, 1992.

Claimant's Submission Agreement was signed on August 28, 1992.

Statement of Answer was filed by Respondent, David Lerner Associates, Inc. on November 2, 1992.

Respondent's Submission Agreement was signed on October 29, 1992.

HEARING INFORMATION

Hearing Date/Sessions: October 4, 1994 - 2 sessions

Hearing Location: NASD Offices, 33 Whitehall Street, New York, New York 10004.

CASE SUMMARY

Claimant alleges that she is a retired, unsophisticated investor and that Respondent defrauded her resulting in damages in the amount of \$58,324.00. Claimant explains that Mr. Martin Walcoe, a Vice President for Respondent, recommended that Claimant sell two conservative mutual bond funds and invest that and other money in what became a worthless limited partnership, a life insurance policy ("personalized money tree"), and a collateralized mortgage ("Davey Mae"). Claimant further states that she complained to Mr. Walcoe and Lerner's Legal Department and received no help. In sum, Claimant alleges Lerner is liable for recommending speculative securities, Lerner-sponsored securities and other unsuitable investments, as well as for misrepresentation, fraud and breach of fiduciary duty.

Respondent denies all allegations against it. With respect to the life insurance policy, Respondent argues that the NASD does not have proper subject matter jurisdiction pursuant to Section 1 of the *Code of Arbitration Procedure* ("Code"). Respondent maintains that it informed Claimant that the limited partnership was meant to be a long-term investment and that she could not expect to easily dispose of it after two to three years. In addition, Respondent holds that Claimant was informed that while the sponsor of the fund intended to list the units purchased on a national exchange, there was no guarantee that that would occur. Furthermore, Respondent explains that other investments Claimant made performed well, and defended its investment strategy recommended to Claimant based upon its knowledge of Claimant's assets.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$58,324.00 plus interest, costs and expenses of this proceeding, including attorneys' fees.

Respondent requested that this claim be dismissed in its entirety and that the cost of this proceeding be assessed against the Claimant.

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. Respondent is liable to Claimant in the amount of **EIGHT THOUSAND ONE HUNDRED THIRTY-THREE DOLLARS AND ZERO CENTS (\$8,133.00)**.
3. Respondent's Motion to Dismiss pursuant to Section 1 of the Code is denied.
2. All other claims for relief are denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

Non-refundable filing fee:	\$ 150.00
Hearing Session Deposit (2 sessions x \$500.00):	\$1000.00

1. Claimant paid \$0 and owes \$150.00.
2. Respondent is assessed \$1,000.00 in forum fees to be paid directly to the Claimant.

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

ARBITRATION PANEL

Murray I. Sommer, Esq. - Public Chairperson

Charles C. Marotta - Public Panelist

Maive R. Giovati, Esq. - Industry Panelist

Concurring Arbitrator's Signature

Murray I. Sommer

Nov. 16, 1994

NASD Date of Decision: November 21, 1994

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 16 day of NOV., 1994, before me personally appeared Murray I. Sommer, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Deborah De Jesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County 96
Commission Expires January 24, 1996

ARBITRATION PANEL

Murray I. Sommer, Esq. - Public Chairperson

Charles C. Marotta - Public Panelist

Maive R. Giovati, Esq. - Industry Panelist

Concurring Arbitrator's Signature

Maive R. Giovati, Esq.

11/16/94

NASD Date of Decision: November 21, 1994

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 16 day of Nov., 1994, before me personally appeared Maive R. Giovati, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Deborah De Jesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

ARBITRATION PANEL

Murray I. Sommer, Esq. - Public Chairperson

Charles C. Marotta - Public Panelist

Maive R. Giovati, Esq. - Industry Panelist

Concurring Arbitrator's Signature

Charles C. Marotta

11/15/94

NASD Date of Decision: November 21, 1994

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 16 day of NOV., 1994, before me personally appeared Charles C. Marotta known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Deborah De Jesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996