

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

PUBLIC

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In the Matter of Arbitration Between

Name of Claimants

Harvey Manes  
Harvey Manes, M.D., P.C. Defined Benefit Pension Plan  
Harvey Manes, M.D., P.C. Defined Contribution Pension Plan  
Melissa Manes  
Wendy Manes

vs.

Case #: 92-04245

Name of Respondents

David Lerner Associates, Inc.  
Rick Barron

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**REPRESENTATION**

For Claimants: Bruce Bandes, Esq. and Erol Blank, Esq.

For Respondents: Ruthann G. Niosi, Esq.

**CASE INFORMATION**

Statement of Claim filed: December 18, 1992.

Submission Agreement of Claimant Harvey Manes, individually and Harvey Manes, M.D., P.C. Defined Benefit Pension Plan signed on December 11, 1992.

Submission Agreement of Melissa Manes signed by Claimant Harvey Manes on February 19, 1993.

Submission Agreement of Claimant Harvey Manes, M.D., P.C. Defined Contribution Pension Plan and Claimant Wendy Manes by Claimant Harvey Manes signed on March 10, 1993.

Submission Agreement of Respondents signed on June 3, 1993.

Statement of Answer filed by Respondents on: May 24, 1993.

### **HEARING INFORMATION**

Hearing Dates/Sessions:                      November 18, 1993    -    2 sessions  
   November 19, 1993    -    2 sessions

Hearing Location:    NASD offices located in New York City, New York.

### **CASE SUMMARY**

Claimants alleged Claimant Harvey Manes relied upon the recommendations and advice of Respondents in advising Claimants with regard to the appropriate means of funding an individual retirement account, a defined benefit and a defined contribution pension plan intended to provide for Claimants' financial security at retirement and as a means of establishing a fund under the New York Uniform Gift to Minors Act to provide for the needs of Melissa Manes and Wendy Manes. Claimants further alleged Claimant Harvey Manes specifically apprised Respondent Barron prior to purchasing the securities at issue that he wanted funds that would not be volatile or involve high-risk but rather was looking for conservative investments and stressed that long-term stability and growth was essential. Claimants further alleged that contrary to these investment objectives, Respondents encouraged Mr. Manes to purchase securities that were unsuitable for the financial objectives Claimants were seeking and encouraged Claimants to leave the money in these funds claiming that the short-term declines in the price of the fund shares would shortly be reversed and stability restored. Claimants further alleged that as a result of the sale of unsuitable securities and Respondents' misrepresentations as to the stability of these funds, the Claimants have sustained a direct market loss.

Respondents maintained Claimant Harvey Manes is a wealthy surgeon who is financially sophisticated and experienced in the market and he represented himself to Respondents as a sophisticated, knowledgeable and savvy investor with the financial capabilities to withstand the risk of investing in even the most speculative investments. Respondents further maintained the Claimant Harvey Manes indicated to Respondents upon numerous occasions that he was looking for a very high return on his investments and that safety was of minimal concern. Respondents further maintained throughout Claimants' dealings with Respondents, Claimant directed trading and made all investment decisions, preferring to use Mr. Barron as a source of information relating to the status of his investments. Respondents further maintained Claimants in all events had knowledge of and assumed the risks incident to investing in the securities markets and Claimants alleged losses were not proximately caused by the alleged misconduct of Respondents. Respondents further maintained Claimants are not entitled to attorneys fees and/or punitive and exemplary damages under New York State Law.

### **RELIEF REQUESTED**

Claimants requested damages of \$210,129.50 plus such other and further relief that the panel deems appropriate including punitive or exemplary damages to the fullest extent allowed by law plus the costs of the proceedings including attorneys' fees.

Respondents requested that all claims against them be dismissed in their entirety and that the costs of the hearing be assessed against the Claimants.

### **AWARD**

1. All claims by the Claimants against all Respondents be and hereby are denied in their entirety.
2. The Claimants' claims for punitive or exemplary damages are denied.
3. Each party shall bear their respective costs including attorneys' fees.

### **FORUM FEES**

Pursuant to Section 44(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

$\$750.00 \times 4 \text{ sessions} = \$3,000.00$  less Claimants' hearing session deposit (\$750.00) = net \$2,250.00 due

The Claimant Harvey Manes be and hereby is liable and shall pay to the NASD the sum of \$750.00 representing his remaining share of forum fees due and owing to the NASD and the Respondents be and hereby are liable jointly and severally and shall pay to the NASD the sum of \$1,500.00 representing their share of the forum fees due and owing to the NASD.

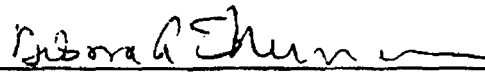
The NASD shall retain the \$200.00 Claimant filing fee previously deposited by the Claimant.

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

ARBITRATION PANEL

Deborah Sherman, Esq.	-	Public Chairperson
John A. Kirincich	-	Public Panelist
Paul M. Rosenthal	-	Industry Panelist

CONCURRING ARBITRATORS' SIGNATURES

  
Deborah Sherman, Esq.

Execution  
Date of ~~Decision~~ 1/18/94

Date of Decision: January 19, 1994

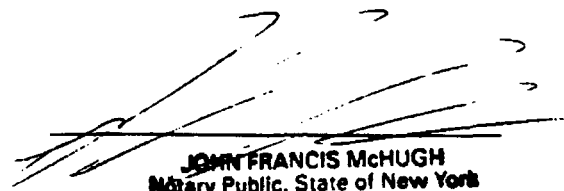
Award #92-04245

STATE OF:

SS:

COUNTY OF:

On this 16<sup>th</sup> day of December, 1994, before me personally appeared Deborah Sherman, 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.

  
JOHN FRANCIS MCHUGH  
Notary Public, State of New York  
No. 31-4886140  
Qualified in New York County  
Commission Expires February 2, 1995

STATE OF:

SS:

COUNTY OF:

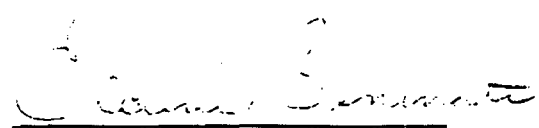
On this      day of      , 1994, before me personally appeared John A. Kirincich known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: NEW YORK

SS:

COUNTY OF: NEW YORK

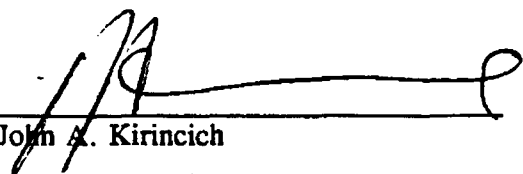
On this 16<sup>th</sup> day of December, 1994, before me personally appeared Paul M. Rosenthal known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

  
ELAINE BENINATI  
Notary Public, State of New York  
No. 43-4888002  
Qualified in Richmond County  
Commission Expires March 23, 1995

**ARBITRATION PANEL**

Deborah Sherman. Esq.	-	Public Chairperson
John A. Kirincich	-	Public Panelist
Paul M. Rosenthal	-	Industry Panelist

**CONCURRING ARBITRATORS' SIGNATURES**

  
John A. Kirincich

Execution  
Date of ~~1993~~

12/30/93

Date of Decision: January 19, 1994

Award #92-04245

STATE OF:

SS:

COUNTY OF:

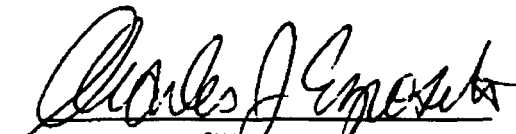
On this      day of      , 1994, before me personally appeared Deborah Sherman, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

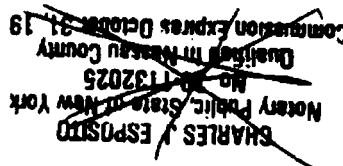
STATE OF: NEW YORK

SS:

COUNTY OF: NEW YORK

On this 30<sup>th</sup> day of DECEMBER, 1994, before me personally appeared John A. Kirincich 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.

  
CHARLES J. ESPOSITO  
Notary Public, State of New York  
No 30-1132025  
Qualified in Nassau County  
Commission Expires October 31, 1995



STATE OF:

SS:

COUNTY OF:

On this      day of      , 1994, before me personally appeared Paul M. Rosenthal known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

Award #92-04245

STATE OF:

SS:

COUNTY OF:

On this      day of      , 1994, before me personally appeared **Deborah Sherman, Esq.** know 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.

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STATE OF:

SS:

COUNTY OF:

On this      day of      , 1994, before me personally appeared **John A. Kirincich** 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.

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STATE OF: *NEW YORK*

SS:

COUNTY OF: *New York*

On this *30<sup>th</sup>* day of *December*, 1994, before me personally appeared **Paul M. Rosenthal** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that the executed the same.

*Elaine Beninati*

ELAINE BENINATI  
Notary Public, State of New York  
No. 43-488002  
Qualified in Richmond County  
Commission Expires March 23, 19*95*

**ARBITRATION PANEL**

Deborah Sherman, Esq.	-	Public Chairperson
John A. Kirincich	-	Public Panelist
Paul M. Rosenthal	-	Industry Panelist

**CONCURRING ARBITRATORS' SIGNATURES**

  
Paul M. Rosenthal

Execution  
Date of ~~Decision~~

12/30/93

Date of Decison: January 19, 1994