

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Barbara Stissi, Stephanie Depalo et al.

93-00540

Name of Respondents

David Lerner Associates
George Villasi

REPRESENTATION

For Claimants Barbara Stissi, Stephanie Depalo, Mia Terese Depalo and Barbara Stiss as guardian for Frank William Stissi ("Claimants"): John E. Lawlor, Esq. located in Garden City, New York.

For Respondents David Lerner Associates, Inc. ("David Lerner") and George Villasi ("Villasi"): Ruthann G. Niosi, Esq. of New York City, New York.

CASE INFORMATION

Statement of Claim filed: February 9, 1993.

Claimants Submission Agreements signed on: January 13, 1993.

Joint Statement of Answer filed by Respondents David Lerner and Villasi on: July 8, 1993.

Respondent David Lerner's Submission Agreement signed on: August 2, 1993.

Respondent Villasi's Submission Agreement signed on: August 2, 1993.

HEARING INFORMATION

Hearing Dates/Sessions:	May 4, 1994	-	Two Sessions
	May 5, 1994	-	Two Sessions

Hearing Location: National Association of Securities Dealers, Inc. offices located

in New York City, New York.

CASE SUMMARY

Claimant Barbara Stissi and her three children received, as a result of litigation, an award totalling \$687,000.00. Claimant Barbara Stissi alleged that these monies virtually represented her net worth; that the monies awarded to her children, who were minors at the time, were placed in trust accounts with the intention of saving the principal and accumulated earnings for future educational expenses; that Claimant was introduced to Respondent Villasi, a registered representative of David Lerner Associates, Inc. ("David Lerner") in or about 1986 by her accountant with respect to investing aforesaid monies; that Claimant informed Respondent Villasi that she was unsophisticated in financial matters; and that Respondent assured Claimant that any investments would be maintained in a secure and conservative manner whose principal value would be safe and which would generate income.

Claimants further alleged that Respondent, acting under the authority of Respondent Lerner, used the awarded monies to purchase Birtcher Real Estate Income Partners, III ("Birtcher") for a sum total of \$90,000.00 for Claimants' accounts; that Claimant relied entirely on Respondent Villasi's recommendation and assurance that this security among others were suitable and consistent with the needs and objectives of Claimant and her children's trust accounts; that none of these transactions were executed at the instance or request of Claimant; that Respondent Villasi did not inform Claimant nor was Claimant aware of the speculative and unsuitable nature of these investments; that Respondent Villasi concealed from Claimant that Claimants' accounts were sustaining losses; that Respondent Villasi misrepresented the value of the investments for the children's accounts to the Court appointed guardian ad litem; and that such misrepresentation continued through June, 1991.

Claimants also alleged that aforesaid conduct constitutes common law fraud under the laws of the State of New York; that Respondents have breached an express or implied contract with Claimants by failing to exercise diligence with respect to their accounts and by failing to abide by industry standards and David Lerner's own practices and procedures; that this conduct constitutes violations of NYSE Rules 405 and 342, and Article 3, Sections 1, 18, and 27 of the Rules of Fair Practice of the NASD; and that David Lerner violated its duty to exercise due diligence, was negligent in failing to learn and monitor the transactions related to Claimants' accounts, and to effectively supervise Respondent Villasi.

Respondents maintained that Claimants were referred to Respondent Villasi by Claimant's accountant; that accounts for Claimants' were opened at David Lerner upon the instructions of Claimant's accountant and attorney, both of whom were actively involved in all investment planning and decisions; that the awarded monies were a substantial amount of which only approximately 13% was invested

into Birtcher at the behest of Claimant's accountant and attorney; that a full and accurate disclosure of the investments was made before execution of the trade; that it was represented to Respondent Villasi that both Claimant and her accountant reviewed the prospectus, understood it and desired the investments to be made; that at no time prior to the filing of the complaint in this action did Claimant, her accountant, or attorney complain about any of the investments or about Respondent Villasi's representation relative to the investments; and that contact between Claimant and David Lerner ceased four years ago when Claimant changed accountants and attorneys, and transferred her account from of David Lerner.

Respondents also maintained that the Statement of Claim fails to state a cause of action as to common law fraud, breach of fiduciary duty or failure to supervise; that Claimant failed to state a claim for which relief can be granted; that Claimants assumed all damages sustained because Claimant had knowledge of all eventual transactions and assumed all the risks incident to investing in the securities market; that Respondents acted in good faith and did not directly or indirectly induce any violation under common law or the rules and regulations of the NASD or the NYSE; that any alleged losses were not proximately caused by any misconduct of Respondents; that no losses have actually been sustained; and that Claimants allege a cause of action for the purchase of investments which were made over six years ago, and thus, Claimants are precluded by the NASD Code of Arbitration Procedure from bringing this action.

RELIEF REQUESTED

Claimant requested an award against Respondents for the following:

1. Compensatory damages in the amount of \$90,000.00, plus interest from the date such damages are deemed to have accrued;
2. Costs, disbursements, and attorney's fees; and
3. Such other relief as this panel deems just and proper.

Respondents requested that the arbitration panel find in Respondents' favor as follows:

1. All claims as against Respondents be dismissed in there entirety;
2. Claimant's request for attorney's fees be denied;
3. No award for exemplary damages; and
4. The costs of the hearings be held as against Claimant. 5

OTHER ISSUES CONSIDERED & DECIDED

On November 4, 1993, Pursuant to Section 15 of the NASD Code of Arbitration Procedure, the Director of Arbitration, after reviewing the submissions of all parties regarding Respondents' David Lerner and Villasi's Motion to Dismiss pursuant to section 15 of the Code of Arbitration Procedure, determined that all allegations of wrongdoing made prior to February 9, 1987 were not eligible for submission to arbitration and that any purchases made prior to February 9, 1987 would be permitted to go to the panel, but only as to the allegations of wrongdoing on or after February 9, 1987. All purchases made on or after this date were to be considered by the panel of arbitrators. However, the parties advised the arbitrators that they agreed to submit all claims as stated in the statement of claim to arbitration to be decided upon by the panel. The arbitrators agreed to render a decision as to all claims set forth in the statement of claim, and the decision of the Director with respect to the Motion to Dismiss pursuant to Section 15 of the Code of Arbitration Procedure was set aside by the arbitrators.

The parties have agreed that the Award in this matter may be executed in counterpart copies to be simultaneously sent to each member of the panel for their signature.

AWARD

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

1. Claimants did not present evidence sufficiently persuasive to support their allegations that the investments when made in Birtcher Real Estate Income Partners III in Claimants' accounts, under all the circumstances, were unsuitable, or otherwise gave rise to valid claims against Respondents. Therefore, all claims against Respondents be and hereby are denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrators determined that the NASD shall retain the \$150.00 filing fee and \$500.00 hearing session deposit and the following Forum Fees are assessed:

4 sessions X \$500 = \$2,000.00 minus \$500.00 hearing session deposit = net \$1500.00 due.

Respondents be and hereby are liable, jointly and severally, and shall pay to the NASD the sum of \$1500.00 representing outstanding forum fees.

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

Concurring Arbitrators' Signatures
Name

Melvin Lyon
Melvin Lyon
Public Arbitrator - Chairperson

Virginia M. Handal
Public Arbitrator

Daniel B. Berkson, Esq.
Industry Arbitrator

Date of Decision: June 28, 1994

STATE OF NEW JERSEY

COUNTY OF BERGEN

On this 23rd day of JUNE, 1994, before me personally appeared MELVIN LYON known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

K. Lynch

KIRSTEN M. LYNCH
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires on 10-29-98

Respondents be and hereby are liable, jointly and severally, and shall pay to the NASD the sum of \$1500.00 representing outstanding forum fees.

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

Concurring Arbitrators' Signatures
Name

Melvin Lyon
Public Arbitrator - Chairperson

Virginia M. Handal

Virginia M. Handal
Public Arbitrator

Daniel B. Berkson, Esq.
Industry Arbitrator

Date of Decision: June 28, 1994

STATE OF

COUNTY OF

On this 27 day of June, 1994, before me personally appeared Virginia Haddad known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she 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

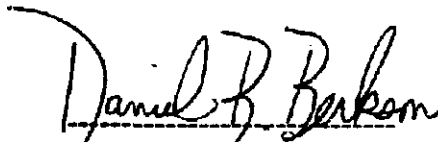
Respondents be and hereby are liable, jointly and severally, and shall pay to the NASD the sum of \$1500.00 representing outstanding forum fees.

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

Concurring Arbitrators' Signatures
Name

Melvin Lyon
Public Arbitrator - Chairperson

Virginia M. Handal
Public Arbitrator

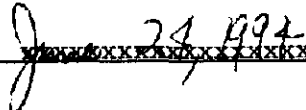


Daniel B. Berkson, Esq.
Industry Arbitrator

Date of Decision: June 28, 1994

Executed on:

Date of Decision:


~~June 28, 1994~~

STATE OF NEW YORK
COUNTY OF NEW YORK

On this 24 day of JUNE, 1994, before me personally appeared
DANIEL B. BERKSON known to me to be the individual described in and
who executed the foregoing instrument and duly acknowledged to me that he/she
executed the same.



CAROL AMES
Notary Public, State of New York
No. 41-4784432
Qualified in Queens County
Commission Expires March 30, 1995