

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant(s)

Kenneth W. and Thelma Mulcahy

Case No# 93-02311

Name of Respondent(s)

David Lerner Associates, Inc.

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**REPRESENTATION**

For Claimants, Kenneth W. Mulcahy and Kenneth W. Mulcahy (the "Mulcahys"):  
Chandra L. Parker of Parker Perlestein & Co., Boca Raton, Florida.

For Respondent, David Lerner Associates, Inc. ("David Lerner"): Ruthann G.  
Niosi, Esq., New York, New York.

**CASE INFORMATION**

Statement of Claim filed: June 10, 1993. Claimants' Submission Agreement  
signed: June 4, 1993.

Statement of Answer filed on October 1, 1993. Respondent's Submission  
Agreement signed: August 3, 1993.

**HEARING INFORMATION**

On May 26, 1994, in Fort Lauderdale, Florida, a hearing lasting two (2) sessions  
were conducted.

**CASE SUMMARY**

The Claim is based upon unsuitability, misrepresentation and fraud. Claimants  
with a stated desire for investments with the primary goal of principal safety,  
willing only to tolerate a low risk to gain income, was solicited and induced to  
purchase shares in a mutual fund which was of a higher degree of risk than  
Claimants would have knowingly accepted. The security purchased at issue was  
the Putnam High Income Government Trust.

Respondent denied all allegations of wrongdoing and alleged that in fact, the Claimants understood and voluntarily assumed the risks of their investment.

### **RELIEF REQUESTED**

Claimants requested damages in the amount of \$60,344.38 representing investment loss plus the amount said investment would have earned had the investment been in a well managed account. Claimants also requests costs and fees of this action and costs and expenses of expert witnesses if used, reasonable counsel's fees and unspecified amount of punitive damages.

Respondent requested dismissal of all claims plus reimbursement of attorney's fees and costs.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

### **AWARD**

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

1. Respondent, Lerner, is found not liable and, therefore, all claims against the Respondent is hereby dismissed.
2. Claimants' requests for punitive damages and attorney's fees and costs relating to this action are hereby denied.
3. Respondent's request for costs and attorney's fees is denied.

### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

**FORUM FEES**

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,000.00 (two hearing sessions x \$500.00 per session).
2. Claimants are assessed \$500.00 for which the NASD shall retain the \$500.00 previously deposited in full satisfaction thereof leaving a zero balance due to the NASD.
3. Respondent is hereby assessed \$500.00 payable directly to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$150.00 paid by the Claimants.

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

Concurring Arbitrators' Signatures

/s/  
Casey W. Mills, Esq.

Public

/s/  
George Davis

Industry

/s/  
Manny Levine

Public

Date of Decision:

7/7/94