

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Barbara Kahn

vs.

Case No.
95-04163

Names of Respondents

David Lerner Associates, Inc.
Martin Lerner

REPRESENTATION

For Claimant Barbara Kahn ("Claimant") appeared Dan A. Druz, Esq., a sole practitioner located in Manasquan, New Jersey.

For Respondent David Lerner Associates, Inc. ("David Lerner Associates") and Martin Lerner ("Lerner") (collectively "Respondents") appeared Ruthann G. Niosi, Esq., a sole practitioner located in New York, New York.

CASE INFORMATION

Claimant's Statement of Claim was filed on August 28, 1995.

Claimant's Submission Agreement was signed on August 28, 1995.

Respondents' Joint Statement of Answer and Motion to Dismiss was filed on September 2, 1998.

Respondents' did not file executed Submission Agreements.

HEARING INFORMATION

Hearing Dates/Sessions:	December 4, 1998	-	1 session
	December 18, 1998	-	2 sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that, in early 1989, she attended a financial planning seminar hosted by Lerner and was induced by Lerner to invest with David Lerner Associates. Claimant further alleged that Lerner agreed to handle her account personally and strongly recommended that Claimant liquidate many of her assets in order to invest in what Lerner called a "SuperTrust." Claimant stated that the investment, labeled "The Money Tree" in correspondence and brochures from Respondents, consisted of purchasing a whole life insurance policy issued by North Atlantic Life Insurance Company of America. Claimant maintained that, in addition to having little investment experience, she was never apprised of the true risk of her investment. Claimant further maintained that Lerner represented that "The Money Tree" was a safe investment with little risk. Claimant asserted that, subsequently, the cash value of the policy diminished to less than \$83,000.00, despite having paid premiums for four years, with her investment totalling \$121,600.00. Claimant further asserted that she could not afford to pay the fifth year's premium due to the unsuitability of the investment.

Respondents maintained that the claims were improperly brought against David Lerner Associates. Respondents asserted that the life insurance policy at issue was sold through David Lerner Associates, nor were they placed into a brokerage account held by, nor in safekeeping with, David Lerner Associates. Respondents contended that, in 1989, Lerner was employed as an insurance salesman with an insurance company owned by the David Lerner Organization. Respondents asserted that Lerner submitted to this arbitration because he is currently registered to sell security products. Respondents maintained that the term "SuperTrust" is a term given to the concept of an irrevocable life insurance trust and is not a security but, rather, the description of the vehicle within which an insurance policy is held to assist in estate planning. Respondents contended that Lerner never made any representations to Claimant that the purchase of life insurance to fund her irrevocable trust was an investment, nor that its intent was anything other than to protect her estate. Respondents further contended that it appeared that Claimant agreed with Lerner's recommendations, as she retained and consulted with an attorney to prepare an irrevocable life insurance trust and used the North Atlantic Life insurance policy to fund the trust.

RELIEF REQUESTED

Claimant requested \$38,600.00 in compensatory damages, pre-judgment interest, punitive damages, lost income and opportunity costs, reasonable attorneys' fees, costs and disbursements of the action, and any such further relief as the panel deems just and equitable.

Respondent requested a dismissal of Claimant's Statement of Claim in its entirety.

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 original remains on file with NASD Regulation, Inc.

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 the claims asserted by Claimant against Respondents are hereby dismissed in their entirety;
2. All the claims asserted by Respondents against Claimant are hereby denied in their entirety;
3. All other claims for relief are hereby denied.
4. Based upon the merits of this case, the panel hereby orders that all references to this arbitration be expunged from Lerner's permanent CRD record by NASD Regulation, Inc.

OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure David Lerner Associates shall pay NASD Regulation, Inc. the \$200.00 past due member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$120.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

3 Hearing Sessions at \$400.00 per session	-	\$1,200.00
--	---	------------

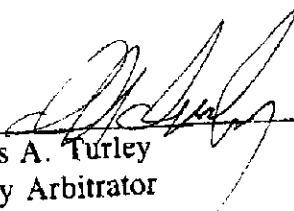
1. Claimant be and hereby is liable for the sum of \$600.00, representing one-half of the forum fees assessed. Claimant previously deposited the sum of \$400.00 with NASD Regulation, Inc., therefore, Claimant owes the balance of \$200.00.
2. Respondents be and hereby are jointly and severally liable and shall pay NASD Regulation, Inc. the sum of \$600.00, representing one-half of the forum fees assessed.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Charles A. Crocco, Esq.	-	Public Chairperson
William M. Crane	-	Public Arbitrator
Thomas A. Turley	-	Industry Arbitrator

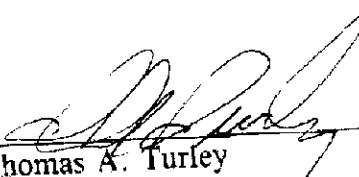
CONCURRING ARBITRATOR'S SIGNATURE



Thomas A. Turley
Industry Arbitrator

Date of decision: Jan 13, 1999

I, Thomas A. Turley, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Thomas A. Turley

ARBITRATION PANEL

Charles A. Crocco, Esq.	-	Public Chairperson
William M. Crane	-	Public Arbitrator
Thomas A. Turley	-	Industry Arbitrator

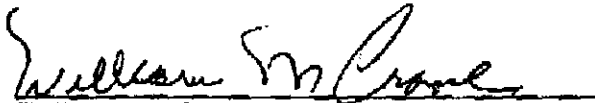
CONCURRING ARBITRATOR'S SIGNATURE



William M. Crane
Public Arbitrator

Date of decision: Jan 13, 1999

I, William M. Crane, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


William M. Crane

ARBITRATION PANEL

Charles A. Crocco, Esq.	-	Public Chairperson
William M. Crane	-	Public Arbitrator
Thomas A. Turley	-	Industry Arbitrator

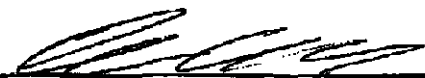
CONCURRING ARBITRATOR'S SIGNATURE



Charles A. Crocco, Esq.
Chairperson-Public Arbitrator

Date of decision: _____ Jan 13, 1999

I, Charles A. Crocco, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Charles A. Crocco, Esq.