

**AWARD**  
**NASD Regulation, Inc.**

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In the Matter of Arbitration Between

William H. Davidson and  
Mesa, Inc.

Claimant.

and

No. 97-00126

The Harriman Group, Inc. a/k/a HGI and  
Joseph Tuozzo, Bernice Lerner, Jeffrey Gray,  
Frank Casillo, Hanifen, Imhoff Clearing Corporation,  
The Harriman Group, Inc., Mark A. Hanna,  
Stephen Palumbo and Brian Douglas Scanlon  
Respondents.

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**REPRESENTATION OF PARTIES**

Claimants, William H. Davidson and Mesa, Inc. ("Claimants"), were represented by Bradd Milove, Esquire of Miller Milove & Kob located in San Diego, California.

Respondent Joseph Tuozzo represented himself.

Respondent Bernice Lerner represented herself.

Respondent Jeffrey Gray was represented by Robert J. Bergson, Esquire of Herrick Feinstein, L.L.P. located in New York, New York.

Respondent Frank J. Casillo represented himself.

Respondent Hanifen, Imhoff Clearing Corporation was represented by Steven D. Plissey, Esquire of William, Youle & Koenigs, P.C. located in Denver, Colorado.

Respondent The Harriman Group, Inc. was unrepresented.

Respondent Mark Hanna represented himself.

Respondent Stephen Palumbo represented himself

Respondent Brian David Scanlon represented himself.

### CASE INFORMATION

Claimants, William H. Davidson and Mesa, Incorporated's Statement of Claim was filed on or about January 13, 1997. Claimants, William H. Davidson and Mesa, Incorporated's Amended Statement of Claim was filed on or about October 10, 1997. Claimant Mesa Incorporated's Submission Agreement was signed on February 24, 1997. Claimant William H. Davidson's Submission Agreement was signed on February 24, 1997.

Respondent Jeffrey Gray's Answer was filed on or about March 23, 1998. The NASD has no record of a Uniform Submission Agreement from Respondent Jeffrey Gray.

Respondents the Harriman Group Inc. and Joseph Tuozzo's Joint Statement Answer and Motion to Dismiss and to Strike was filed on or about May 22, 1997. The Harriman Group Incorporated's Submission Agreement was signed on March 27, 1997 by Frank Casillo its Vice-President. Joseph Tuozzo's Submission Agreement was signed on March 25, 1997.

Respondent Mark Hanna's Statement of Answer and Motion to Dismiss was filed on or about June 8, 1998. The NASD has no record of a Uniform Submission Agreement of Mark Hanna.

Respondent Hanifen, Imhoff Clearing Corporation's Statement of Answer was filed on or about February 2, 1998. Respondent Hanifen Imhoff Clearing Corporation's Submission Agreement was signed on March 18, 1998 by Richard T. Huebner on February 4, 1998.

Respondent Bernice Lerner's Answer was filed on or about April 7, 1998. The NASD has no record of a Uniform Submission Agreement from Bernice Lerner.

The NASD has no record of a Statement of Answer or Uniform Submission Agreement from Brian Douglas Scanlon.

Stephen Palumbo's Statement of Answer was filed on or about September 27, 1998. The NASD has no record of a Uniform Submission Agreement from Stephen Palumbo.

The NASD has no record of a Statement of Answer or Uniform Submission Agreement from Frank Casillo.

### HEARING INFORMATION

There were three (3) full panel telephonic pre-hearings on January 12, 1998, June 17, 1998 and August 24, 1998 for one (1) session each. There was one (1) single arbitrator telephonic pre-hearing on October 30, 1998 for one (1) session. The in person full panel hearing was held on November 17, 1998, November 18, 1998 and November 19, 1998 for two (2) sessions each day and January 4, 1999 and January 5, 1999 for three (3) sessions

each day in Dallas, Texas. For a total of fifteen (15) full panel hearings and one single arbitrator pre-hearing.

### **CASE SUMMARY**

Claimant William H. Davidson, a management consultant, and Mesa, Incorporated, a Dallas based company of which William Davidson is CEO, ("Claimants") alleged that their stock broker Respondent Joseph Tuozzo made unauthorized trades in two small cap stocks, International Cutlery, Ltd. ("ICUT") and Natural Health Trends ("NHT"), Corporation in Claimants' account at Respondent Harriman Group, Inc. Claimants further alleged that Respondents engaged in widespread wrongful conduct with respect to these stocks such as price stabilization efforts, inventory control and stock parking by Respondent Harriman Group, Inc., the underwriter for both securities.

Claimants alleged causes of action against Respondents including Fraud, Controlling Person Liability, Breach of Fiduciary Duty, Negligent Failure to Supervise, Gross Negligence and Negligent Misrepresentation, Breach of Contract and Breach of Covenant of Good Faith and Fair Dealing.

Respondent Jeffrey Gray denied any wrongdoing as alleged in the Claimants' Statement of Claim. He specifically denied that he was a "control person" of HGI, that he was a registered supervisor of the broker respondent Joseph Tuozzo, and had any knowledge of the acts alleged in the Statement of Claim. Respondent Jeffrey Gray also asserted affirmative defenses including that Claimants assumed the risk of market fluctuation which caused any losses, waiver, estoppel, and laches, contributory negligence.

Respondents the Harriman Group, Inc. and Joseph Tuozzo denied any wrongdoing as alleged in the Statement of Claim. Respondents specifically asserted that Claimant was a sophisticated investor who indicated that he wished to invest in highly speculative securities that carry the potential for high risk. Further, Claimant indicated that he followed the market closely and opened a regular account and a margin account. When his ICUT stock became stagnant, according to the Answer, Claimants authorized its sale and the purchase of NHT stock. Respondents state that trades were always discussed with and approved by Claimants. Respondents also alleged that Claimants never complained about any trades within the ten days require by the account agreement.

Respondents The Harriman Group, Inc. and Joseph Tuozzo asserted affirmative defenses including that Claimants authorized and ratified all trades and that the Statement of Claim fails to State a Cause of Action upon which relief can be granted.

Respondent Mark Hanna denied any wrongdoing as alleged in the Claimants' Statement of Claim. Respondent Mark Hanna further denies that he was a participant in the management or direct supervision of Claimants' accounts or that he was an officer, director, or "control person." He stated that the Claimants failed to detail the factual basis of any theory of liability against him. Respondent Mark Hanna also asserted

affirmative defenses including failure to state a claim upon which relief can be granted, failure to plead with requisite specificity, failure to state control person liability.

Respondent Hanifen Imhoff Clearing Corporation, a clearing firm for the Harriman Group, Inc., denied any wrongdoing as alleged in the Claimants' Amended Statement of Claim.

Respondent Stephen Palumbo denied any wrongdoing as alleged in the Claimants' Statement of Claim.

#### **RELIEF REQUESTED**

Claimants William H. Davidson and Mesa, Inc. requested an award for compensatory damages not less than \$172,700.00, exemplary and punitive damages, treble damages, attorneys fees, costs, and prejudgment and postjudgment interest at the maximum legal rate and such other relief as the panel may deem just.

Respondent Jeffrey Gray requested that all claims asserted against him be dismissed in their entirety and that the costs of this proceeding be assessed against Claimants, inclusive of respondent's attorneys' fees and all such other further relief as the panel deem just and necessary.

Respondents The Harriman Group Inc. and Joseph Tuozzo requested that all Claims asserted against them be dismissed in their entirety and that the costs of the arbitration be assessed against Claimants along with attorneys' fees.

Respondent Mark Hanna requested that all Claims asserted against him be dismissed in their entirety, that the costs and expenses of this arbitration be assessed against Claimants and that the panel grant him such other and further relief as is just and proper.

Respondent Hanifen Imhoff Clearing Corporation requested that all Claims asserted against them be dismissed in their entirety, that the costs and expenses of this arbitration be assessed against the Claimants and that the panel grant him such other and further relief is just and proper.

Respondent Stephen Palumbo requested that all Claims asserted against him be dismissed in their entirety.

Respondent Lerner requested that all Claims asserted against her be dismissed in their entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

During the November hearing sessions, the Claimants announced a settlement with Respondents Stephen Palumbo and Jeffrey Gray. Therefore, the panel took no further action as to these Respondents.

Respondents The Harriman Group, Inc., Frank Casillo, Brian Douglas Scanlon and Joseph Tuozzo filed for bankruptcy protection. Therefor, the panel took no action as to these Respondents. The Panel would have found liability for wrongs committed by The Harriman Group, Inc., Frank Casillo, Brian Douglas Scanlon, and Joseph Tuozzo if not precluded from doing so.

Upon review of the file and the representations made by/on behalf of Claimants, William H. Davidson and Mesa, Inc. the undersigned Arbitrators have determined that Respondents, Jeffrey Gray, Bernice Lerner, Mark Hanna and Stephen Palumbo have been properly served with the Statement of Claim pursuant to Rules 10302 and 10314 of the NASD Code of Arbitration Procedure ("the Code.") The undersigned Arbitrators have also determined that Respondents, Jeffrey Gray, Bernice Lerner, Mark Hanna and Stephen Palumbo, did receive due notice of the hearing as required under Rule 10318 of the Code.

Respondent, Jeffrey Gray, Bernice Lerner, Mark Hanna and Stephen Palumbo, did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure.

The parties present at the hearing 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(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

**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. That the Respondents, Bernice Levin Lerner and Mark Hanna, are jointly and severally liable for and shall pay the Claimants William H. Davidson and Mesa, Inc. compensatory damages in the amount of one hundred fifty seven thousand, four hundred and one dollars (\$157,401.00) and interest at ten percent (10%) thereon from the date of service of this Award;
2. That the Respondents, Bernice Levin Lerner and Mark Hanna are jointly and severally liable for and shall pay Claimants William H. Davidson and Mesa,

Inc. punitive damages in the amount of three hundred and fourteen thousand, eight hundred and two dollars (\$314,802.00). In deciding to award punitive damages the panel considered the documents and arguments of counsel, the case law and statutory law submitted by counsel and finds that there is support for an award of punitive damages;

3. That the Respondents, Bernice Levin Lerner and Mark Hanna, are jointly and severally liable for and shall pay the Claimants William H. Davidson and Mesa, Inc. attorneys' fees and costs in the amount of one hundred thousand dollars (\$100,000.00) In deciding to award attorneys' fees the panel considered the documents and arguments of counsel and case law and statutory law submitted by counsel and finds that there is support for an award of attorneys' fees;
4. That all Claims against Respondent The Hanifen Imhoff Clearing Corp. are dismissed with prejudice;
5. That the Respondent Hanifen Imhoff Clearing Corporation is liable for and shall pay Claimants' attorneys' costs which were advanced for retrieval and photocopying certain records in the amount of two thousand, six hundred and fifty dollars (\$2,650.00);
6. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$1,000.00 per full panel hearing session and \$300.00 for each single arbitrator pre-hearing conference, if any. There were three full panel pre-hearing conferences x \$1000.00 and there was one single arbitrator pre-hearing x \$300.00 and twelve in person hearing sessions x \$1000.00 hearing sessions \$15,300.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code,) a hearing session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with an Arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, Claimant, William H. Davidson, has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$250.00 and has also paid the hearing session deposit of \$1000. 00.

Respondents, Bernice Lerner and Mark Hanna are jointly and severally liable for the remaining forum fees in this matter and shall pay the sum of \$14,300.00 to NASD Regulation, Inc., Office of Dispute Resolution.

NASD Regulation, Inc., Office of Dispute Resolution  
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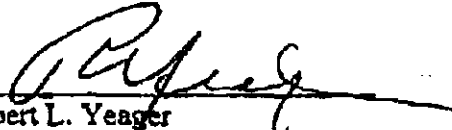
That Respondent Stephen Palumbo is liable for and shall pay the sum of \$1000.00 to the NASD Regulation, Inc., Office of Dispute Resolution for the past due adjournment fee previously invoiced to him.

### OTHER FEES

Pursuant to Rule 10333 of the Code, Respondent, Hanifen Imhoff Clearing Corporation shall pay to the NASD Regulation, Inc., Office of Dispute Resolution, the \$500.00 past due member surcharge previously invoiced.

Fees are payable to the NASD Regulation, Inc., Office of Dispute Resolution.

### Concurring Arbitrators' Signatures:

  
Robert L. Yeager  
Chairperson  
Public Arbitrator

March 18, 1999

Date

\_\_\_\_\_  
Stephen C. Thayer  
Panelist  
Public Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
William L. Cravens  
Panelist  
Industry Arbitrator

\_\_\_\_\_  
Date

NASD Regulation, Inc., Office of Dispute Resolution  
Arbitration No. 97-00126; Award Page 7 of 7

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Panelist  
Industry Arbitrator

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3/22/99



NASD Regulation, Inc., Office of Dispute Resolution  
Arbitration No. 97-00126; Award Page 7 of 7

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**OTHER FEES**

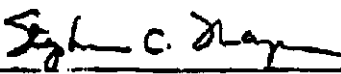
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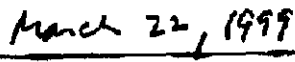
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Date

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William L. Cravens  
Panelist  
Industry Arbitrator

\_\_\_\_\_  
Date

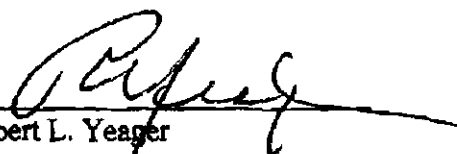
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