

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Allen Sternberg

Case Number: 99-02732

Name of the Respondents  
Bernice Levine Lerner; Brian Scanlon;  
Suzanne D. Scanlon, d/b/a Dansue Associates;  
Jeffrey Gray; Peter Carrao; Shane Ferras;  
Stephen Palumbo; John Bosco; Joseph J. Tuozzo;  
The Harriman Group, Inc., f/k/a  
HGI, Inc.; and Mark Arthur Hanna

Hearing Site: Indianapolis, Indiana

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**REPRESENTATION OF PARTIES**

Claimant Allen Sternberg ("Sternberg") was represented by Thomas N. Eckerle, Esq., of the firm of Henderson, Daily, Withrow & DeVoe, located in Indianapolis, Indiana.

Respondents Bernice Levine Lerner ("Lerner"), Brian Scanlon ("B. Scanlon"), Shane Ferras ("Ferras"), John Bosco ("Bosco"), Joseph J. Tuozzo ("Tuozzo"), The Harriman Group a/k/a HGI, Inc. ("HGI") and Mark Arthur Hanna ("Hanna") did not appear.

Respondents Jeffrey Gray ("Gray") and Peter Carrao ("Carrao") were represented by Robert J. Bergson, Esq., of the firm of Margolis Bergson LLP, located in New York, New York.

Respondent Suzanne D. Scanlon, d/b/a Dansue Associates ("S. Scanlon") was represented by Anthony J. Constantini, Esq., of the firm of Duane, Morris & Heckscher LLP, located in New York, New York.

Respondent Stephen Palumbo ("Palumbo") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed: June 15, 1999.

Claimant signed the Uniform Submission Agreement: June 10, 1999.

Motion to Dismiss for Lack of Jurisdiction filed by Respondent Suzanne D. Scanlon on or about: May 12, 2000.

Claimant's Brief in Response to Motion to Dismiss for Lack of Jurisdiction filed on or about: June 7, 2000.

Supplement to Claimant's Brief in Response to Motion to Dismiss for Lack of Jurisdiction filed on or about: June 28, 2000.

Statement of Answer filed by Respondents Gray and Carrao on or about: August 27, 1999.

Statement of Answer and Motion to Dismiss filed by Respondent Palumbo on or about: November 2, 2000

Respondent Palumbo signed the Uniform Submission Agreement: November 9, 2000.

Claimant's Response to the Motion to Dismiss filed by Respondent Palumbo was filed on or about: November 16, 2000.

Respondents Lerner, B. Scanlon, Ferras, Bosco, Tuozzo, HGI and Hanna did not file a Statement of Answer.

Respondents Bernice Levine Lerner, Brian Scanlon, Suzanne D. Scanlon, d/b/a Dansue Associates, Jeffrey Gray, Peter Carrao, Shane Ferras, John Bosco, Joseph J. Tuozzo, The Harriman Group, Inc., f/k/a HGI, Inc. and Mark Arthur Hanna did not file a signed a Uniform Submission Agreement.

#### CASE SUMMARY

This claim was filed as a result of an arbitration award entered by a panel against HGI and a Scott Follett on October 16, 1997 which awarded Claimant damages of approximately \$363,000.00 plus interest and attorneys' fees. Claimant asserted that from late 1995 through 1997, the Respondents engaged in a scheme to loot HGI's assets by numerous direct and indirect transfers by HGI to the remaining Respondents and their designees. Claimant alleged that these transfers were made without fair consideration to HGI for no legitimate business purpose and rendered HGI insolvent. These transfers were in violation of state law and made with the intent to defraud Sternberg and other customers with claims against HGI. In addition, Claimant alleged that HGI was operated in such a manner that the corporate form was ignored by the Respondents and HGI became a mere instrumentality of the individual Respondents, making them liable for all HGI's debts and obligations. Further allegations asserted that the individual Respondents were liable under control person liability.

Respondent S. Scanlon moved to dismiss, claiming the Panel lacked jurisdiction over her.

Unless specifically admitted in their Answer, Respondents Gray and Carrao denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Statement of Claim fails to state a cause of action.
2. Respondents Gray and Carrao did not receive any assets from HGI other than in the form of earned compensation representing their salaries and commissions earned in the scope of their employment;

3. Claimant never had any contact with Respondents Gray and Carrao, nor did Gray and Carrao have any reason to communicate with Claimant;
4. Respondents Gray and Carrao did not supervise the broker responsible for Claimant's account, nor did they receive any commissions or compensation based on the activity in Claimant's account;
5. Respondents Gray and Carrao were not control persons of HGI;
6. Claimant has already recovered, or will recover, payments from third parties that will satisfy all, or part of, the damages requested. To the extent Claimant receives these sums, the amount of damages must be reduced by a commensurate amount;
7. Claimant's claims are barred by the doctrines of waiver, estoppel and laches; and
8. Claimant's claims for relief are barred, in whole or in part, by the Statute of Limitations.

Unless specifically admitted in his Answer, Respondent Palumbo denied the allegations made in the Statement of Claim and asserted the following defenses:

1. He was not a party to the original suit, had no knowledge of the dispute and no award was rendered against him;
2. He did not a control person and did not make financial decisions for HGI; and
3. He did not initiate or receive any fraudulent transfers, but was named solely because he has a Series 24 license.

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$363,300.00
Attorneys' Fees	Unspecified amount
Other Costs	Unspecified amount
Other Monetary/Non-Monetary Relief if any:	Void the transfers to the individual Respondents.

Respondent S. Scanlon requested that the claims against her be dismissed for lack of jurisdiction.

Respondents Gray and Carrao requested judgment dismissing the Statement of Claim in its entirety and for an award reimbursing them for the costs and expenses associated with defending the claim. Including reasonable attorneys' fees and expenses.

Respondent Palumbo requested that the claims be dismissed.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators determined that Respondents Bernice Levine Lerner, Shane Ferras, John Bosco, The Harriman Group, Inc., f/k/a HGI, Inc. and Mark Arthur Hanna were properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter

would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondents Bernice Levine Lerner, Brian Scanlon, Suzanne D. Scanlon, d/b/a Dansue Associates, Jeffrey Gray, Peter Carrao, Shane Ferras, John Bosco, Joseph J. Tuozzo, The Harriman Group, Inc., f/k/a HGI, Inc. and Mark Arthur Hanna did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On or about September 8, 1999, NASD Dispute Resolution received notice that Respondent Joseph J. Tuozzo had filed for bankruptcy. Pursuant to the provisions of the U.S. Bankruptcy Code, all proceedings against this Respondent were stayed and no further information or correspondence was sent to him.

On July 3, 2000, the panel determined that Respondent Scanlon's Motion to Dismiss was denied. Prior to hearing, the panel determined that Respondent Palumbo's Motion to Dismiss was denied.

On February 28, 2001, Claimant advised in writing that settlement had been reached with Respondents Brian Scanlon and Suzanne D. Scanlon, d/b/a Dansue Associates. Pursuant to this settlement, the claims against these two respondents are dismissed with prejudice.

On April 22, 2002, counsel for Respondents Jeffrey Gray and Peter Carrao advised that Claimant had released all claims against these respondents. Pursuant to the Stipulation executed by counsel for the parties, the claims against Respondents Jeffrey Gray and Peter Carrao were dismissed with prejudice.

The panel specifically finds that the salaries and expenses of Respondents Bernice Levine Lerner, Stephen Palumbo, Shane Ferras, John Bosco, and Mark Arthur Hanna were fraudulent transfers under the Indiana Uniform Fraudulent Transfer Act: LC. 32-2-7-1, *et seq.*, as amended

#### **AWARD**

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

1. Respondents Bernice Levine Lerner, Stephen Palumbo, Shane Ferras, John Bosco, The Harriman Group, Inc., f/k/a HGI, Inc. and Mark Arthur Hanna are jointly and severally liable for and shall pay to the Claimant Allen Sternberg the sum of \$179,276.00 as compensatory damages;
2. In addition, Respondents Bernice Levine Lerner, Shane Ferras, John Bosco, The Harriman Group, Inc., f/k/a HGI, Inc. and Mark Arthur Hanna are jointly and severally liable for and shall pay to the Claimant Allen Sternberg the sum of \$29,051.00 in costs;
3. The claims against Respondents Brian Scanlon, Suzanne D. Scanlon, d/b/a Dansue

- Associates, Jeffrey Gray and Peter Carrao are dismissed with prejudice;
4. The parties shall bear their remaining costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated in this decision; and,
  5. Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, The Harriman Group, Inc., f/k/a HGI, Inc. is a party.

Member surcharge	= \$ 1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00	= \$ 2,250.00
Pre-hearing conferences:      April 12, 2000      1 session	
February 1, 2002      1 session	
Two (2) Hearing sessions @ \$1,125.00	= \$ 2,250.00
Hearing Date:                      April 30, 2002      2 sessions	
Total Forum Fees	= \$ 4,500.00

The Panel has assessed \$4,500.00 of the forum fees jointly and severally to Respondents Bernice Levine Lerner, Shane Ferras, John Bosco, The Harriman Group, Inc., f/k/a HGI, Inc. and Mark Arthur Hanna.

### **EEE SUMMARY**

Claimant Allen Sternberg is solely liable for:

Initial Filing Fee	= \$ 300.00
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Less payments = \$ 1,425.00  
 Balance Refunded by NASD Dispute Resolution, Inc. = \$ 1,125.00

Respondent The Harriman Group, Inc., f/k/a HGI, Inc. is solely liable for:

Member Fees = \$ 4,600.00  
 Less payments = \$ 0.00  
 Balance Due NASD Dispute Resolution, Inc. = \$ 4,600.00

Respondents Bernice Levine Lerner, Shane Ferras, John Bosco, The Harriman Group, Inc., f/k/a HGI, Inc. and Mark Arthur Hanna are jointly and severally liable for:


Forum Fees = \$ 4,500.00  
 Less Payments = \$ 0.00  
 Balance Due NASD Dispute Resolution, Inc. = \$ 4,500.00

All balances are payable to NASD Dispute Resolution, Inc. and are due upon receipt pursuant to Rule 10330(g) of the Code.

#### ARBITRATION PANEL

Stephen C. Cline, Esq. - Public Arbitrator, Presiding Chairperson  
 Daniel P. Urban - Public Arbitrator  
 Stuart S. Billington - Non-Public Arbitrator

#### Concurring Arbitrators' Signatures

  
 Stephen C. Cline, Esq.  
 Public Arbitrator, Presiding Chairperson

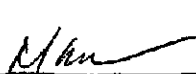
6/28/02  
 Signature Date

\_\_\_\_\_  
 Daniel P. Urban  
 Public Arbitrator

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Stuart S. Billington  
 Non-Public Arbitrator

\_\_\_\_\_  
 Signature Date

7/1/02   
 Date of Service (For NASD Dispute Resolution office use only)

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NASD Dispute Resolution, Inc.

Arbitration No. 99-02732

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Daniel P. Urban - Public Arbitrator

Stuart S. Billington - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Stephen C. Cline, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Daniel P. Urban  
Public Arbitrator

Signature Date

Stuart S. Billington  
Non-Public Arbitrator

JUNE 25, 2002  
Signature Date

7/1/02 Alan  
Date of Service (For NASD Dispute Resolution office use only)