

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant

Marilyn Lamberta-Mosca  
Marilyn Lamberta-Mosca IRA  
Marilyn Lamberta-Mosca TOD  
Dennis Mosca & Marilyn Lamberta-Mosca JTWROS

Case Number: 20-03649

vs.

Respondent

David Lerner Associates, Inc.

Hearing Site: New York, New York

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimants Marilyn Lamberta-Mosca, Marilyn Lamberta-Mosca IRA, Marilyn Lamberta-Mosca TOD, Dennis Mosca & Marilyn Lamberta-Mosca JTWROS: Matt E. Wolper, Esq., Wolper Law Firm, P.A., Plantation, Florida\*.

For Respondent David Lerner Associates, Inc.: Briana K. Huffer, Esq., and Eugene L. Small, Esq., Eugene L. Small, P.C., New York, New York.

\*FINRA recorded the appearance of Claimants' counsel at the time of filing of the Statement of Claim. Counsel's representation of Claimants may have ended with the parties' settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimants' counsel appeared at the expungement hearing.

**CASE INFORMATION**

Statement of Claim filed on or about: October 27, 2020.

Marilyn Lamberta-Mosca signed the Submission Agreement: October 27, 2020.

Marilyn Lamberta-Mosca IRA signed the Submission Agreement: October 27, 2020.

Marilyn Lamberta-Mosca TOD signed the Submission Agreement: October 27, 2020.  
Dennis Mosca & Marilyn Lamberta-Mosca JTWROS signed the Submission Agreement: October 27, 2020.

Statement of Answer filed by Respondent on or about: January 18, 2021.  
David Lerner Associates, Inc. signed the Submission Agreement: January 18, 2021.

### **CASE SUMMARY**

In the Statement of Claim, Claimants asserted the following causes of action: unsuitability; breach of fiduciary duty; negligence/gross negligence; negligent misrepresentation; intentional misrepresentation/omission; negligent hiring, retention, and supervision; and breach of contract. The causes of action relate to investments in Energy 11 L.P. and Spirit of America Energy Fund.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested an award of compensatory damages in an amount to be determined at hearing, but between \$100,000-\$300,000; interest; costs; forum fees; rescission; attorneys' fees; underperformance damages; and to the extent Respondent's misconduct is found to be reckless or intentional, Claimants requested punitive damages against Respondent in an amount sufficient to punish Respondent and deter similar conduct in the future.

In the Statement of Answer, Respondent requested that Claimants' claims be dismissed in their entirety and the costs of this proceeding be fully assessed against Claimants; that the Panel award Respondent its reasonable attorneys' fees and expert witness costs; expungement of all references to the above-captioned arbitration from the registration records of unnamed party Rafael Klein maintained by the Central Registration Depository ("CRD"); and that the Panel grant Respondent any other relief it deems appropriate.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On August 10, 2021, Claimants filed a notice of voluntary dismissal with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

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

1. Respondent's request for expungement on behalf of unnamed party Rafael Klein (CRD Number 2865823) of the above-captioned arbitration (Occurrence Number 2098701) from registration records maintained by the CRD is denied.

### **FEES**

Pursuant to the Code of Arbitration Procedure ("Code"), the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution Services assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$	1,425.00
Expungement Filing Fee	= \$	1,575.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, Respondent David Lerner Associates, Inc. is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

#### **Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

July 13-16, 2021, postponement requested by the parties	WAIVED
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#### **Hearing Session Fees and Assessments**

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

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session Pre-Hearing Conference: June 4, 2021	1 session	= \$	450.00
One (1) pre-hearing session with the Panel @ \$1,125.00/session Pre-Hearing Conference: February 19, 2021	1 session	= \$	1,125.00
One (1) hearing session on expungement request @ \$1,125.00/session Hearing: September 30, 2021	1 session	= \$	1,125.00
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Total Hearing Session Fees		= \$	2,700.00

The Panel has assessed \$787.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,912.50 of the hearing session fees to Respondent, which includes the \$1,125.00 fee for the expungement hearing.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

**ARBITRATION PANEL**

Howard D. Jacob	-	Public Arbitrator, Presiding Chairperson
Ann Judith Gellis	-	Public Arbitrator
Kerry-Ann Austin	-	Public Arbitrator

I, the undersigned Arbitrator, 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.

**Concurring Arbitrators' Signatures**

***Howard D. Jacob***

Howard D. Jacob  
Public Arbitrator, Presiding Chairperson

**10/07/2021**

Signature Date

***Ann Judith Gellis***

Ann Judith Gellis  
Public Arbitrator

**10/10/2021**

Signature Date

***Kerry-Ann Austin***

Kerry-Ann Austin  
Public Arbitrator

**10/07/2021**

Signature Date

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October 12, 2021

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Date of Service (For FINRA Dispute Resolution Services use only)