

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

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In the Matter of the Arbitration Between:

Claimants

Linda Kelderhouse  
Erwin Knapp  
Erwin A. Knapp & Marga Knapp JTWROS  
Erwin Knapp IRA  
Linda Kelderhouse TOD

Case Number: 20-03998

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.

**REPRESENTATION OF PARTIES**

For Claimants Linda Kelderhouse, Erwin Knapp, Erwin A. Knapp & Marga Knapp JTWROS, Erwin Knapp IRA, and Linda Kelderhouse TOD: Matthew E. Wolper, Esq., Wolper Law Firm, P.A., Plantation, Florida\*.

For Respondent David Lerner Associates, Inc.: Briana K. Huffer, Esq. and Eugene 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: December 9, 2020.

Linda Kelderhouse signed the Submission Agreement: December 9, 2020.

Erwin Knapp signed the Submission Agreement: December 9, 2020.

Erwin A. Knapp & Marga Knapp JTWROS signed the Submission Agreement: December 9, 2020.

Erwin Knapp IRA signed the Submission Agreement: December 9, 2020.  
Linda Kelderhouse TOD signed the Submission Agreement: December 9, 2020.

Statement of Answer filed by Respondent on or about: March 16, 2021.  
David Lerner Associates, Inc. signed the Submission Agreement: January 25, 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 II, L.P.; Energy Resources 12, L.P.; the Spirit of America Energy Fund; and the Spirit of America Income and Opportunity 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 compensatory damages in an amount to be determined at trial, but between \$100,000.00 and \$250,000.00; interest; costs; forum fees; rescission; attorneys' fees; punitive damages; and underperformance damages.

In the Statement of Answer, Respondent requested that Claimants' claims be dismissed in their entirety and costs be fully assessed to Claimants; reasonable attorneys' fees and expert witness costs; expungement of this matter from the applicable CRD records; and any other relief as deemed appropriate.

Respondent filed a request for expungement of all references to this matter from Central Registration Depository ("CRD") registration records on behalf of Unnamed Party Daniel Todd Lerner ("Lerner") (Occurrence Number 2115573) and Unnamed Party Martin Kevin Walcoe ("Walcoe") (Occurrence Number 2114712). Please see the Other Issues Considered and Decided section of this Award for more information.

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

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

On March 22, 2021, Respondent filed a Motion to Sever pursuant to Rule 12312 of the Code of Arbitration Procedure ("Code"). On March 31, 2021, Claimants filed a response opposing the Motion to Sever and on April 5, 2021, Respondent filed a Reply. On April 27, 2021, the Panel heard oral arguments on the Motion to Sever. By Order dated April 27, 2021, the Panel denied Respondent's Motion to Sever.

On November 29, 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.

On December 17, 2021, Respondent filed a Motion for Expungement on behalf of Unnamed Parties Lerner and Walcoe, to which no response was filed.

The Panel conducted a recorded, telephonic hearing on January 13, 2022, so the parties could present oral argument and evidence on Respondent's request for expungement on behalf of Unnamed Parties Lerner and Walcoe's.

Claimants and counsel did not participate in the expungement hearing.

At the January 13, 2022 expungement hearing, Respondent withdrew the request for expungement of Occurrence Number 2115573 on behalf of Unnamed Party Lerner.

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 of the above-captioned arbitration (Occurrence Number 2114712) from Unnamed Party Walcoe's 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
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 event giving rise to the dispute. Accordingly, as a party, Respondent David Lerner Associates, Inc. is assessed the following:

Member Surcharge	= \$ 1,700.00
Member Process Fee	= \$ 3,750.00

**Late Pre-Hearing Cancellation Fees**

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

September 15, 2021, cancellation requested by the parties	= \$	100.00
March 30, 2021, cancellation requested by the parties	= \$	300.00
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Total Late Pre-Hearing Cancellation Fees	= \$	400.00

The Panel has assessed \$200.00 of the late pre-hearing cancellation fees, jointly and severally, to Claimants.

The Panel has assessed \$200.00 of the late pre-hearing cancellation fees to Respondent.

**Postponement Fees**

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

November 1-5, 2021, postponement requested by the parties	= \$	1,125.00
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Total Postponement Fees	= \$	1,125.00

The Panel has assessed \$562.50 of the postponement fees, jointly and severally, to Claimants.

The Panel has assessed \$562.50 of the postponement fees to Respondent.

**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 Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: April 27, 2021	1 session	
May 10, 2021	1 session	
One (1) hearing session on expungement request @ \$1,125.00/session	= \$	1,125.00
Hearing: January 13, 2022	1 session	
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Total Hearing Session Fees	= \$	3,375.00

The Panel has assessed \$1,125.00 of the hearing session fees, jointly and severally, to Claimants.

The Panel has assessed \$2,250.00 of the hearing session fees, including the \$1,125.00 expungement hearing session fees, to Respondent.

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

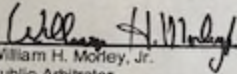
**ARBITRATION PANEL**

John Michael Richardson - Public Arbitrator, Presiding Chairperson  
William H. Morley, Jr. - Public Arbitrator  
Joyce Diane Campbell Priveterre - 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**

**John Michael Richardson** \_\_\_\_\_ **02/10/2022** \_\_\_\_\_  
John Michael Richardson Signature Date  
Public Arbitrator, Presiding Chairperson

 \_\_\_\_\_ **March 14, 2022** \_\_\_\_\_  
William H. Morley, Jr. Signature Date  
Public Arbitrator

**Joyce Diane Campbell Priveterre** \_\_\_\_\_ **02/10/2022** \_\_\_\_\_  
Joyce Diane Campbell Priveterre Signature Date  
Public Arbitrator

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.

February 14, 2022  
Date of Service (For FINRA Dispute Resolution Services use only)