

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Hedvig Mayer

Case Number: 21-00663

vs.

Respondent
David Lerner Associates, Inc.

Hearing Site: New York, New York

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: Customer vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Hedvig Mayer: Sam A. Silverstein, Esq., Kaufmann Gildin & Robbins LLP, New York, New York.

For Respondent David Lerner Associates, Inc.: Gene L. Small, Esq., Eugene L. Small, P.C, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: March 10, 2021.

Hedvig Mayer signed the Submission Agreement: March 8, 2021.

Statement of Answer filed by Respondent on or about: May 21, 2021.

David Lerner Associates, Inc. signed the Submission Agreement: May 21, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: unsuitability; unauthorized activity; failure to supervise; negligent supervision; breach of fiduciary duty; respondeat superior; and violation of FINRA's Conduct Rules. The causes of action relate to investments in Energy II 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, Claimant requested compensatory damages of \$145,795.00; unspecified damages for well managed losses; rescission in the amount of \$39,200.00; punitive damages in the amount of \$370,000.00; pre-judgment interest at 9% per annum; fees and costs; and such other relief as deemed appropriate.

In the Statement of Answer, Respondent requested that Claimant's claims be dismissed in their entirety and the costs of this proceeding be fully assessed against Claimant; award Respondent its attorneys' fees and expert witness costs; grant Respondent's request that this matter (Occurrence Number 2119595) be expunged from Unnamed Party Daniel Lerner's Central Registration Depository ("CRD") registration records; and grant any other relief as deemed appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Panel reviewed Unnamed Party Daniel Todd Lerner's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

In recommending expungement, the Panel relied upon the following documentary or other evidence: testimonies of the witnesses at the hearing; Unnamed Party Daniel Todd Lerner's BrokerCheck® Report; and the exhibits.

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

AWARD

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

1. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2119595) from registration records maintained by the CRD for Unnamed Party Daniel Todd Lerner (CRD Number 1255769) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Daniel Todd Lerner must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure (“Code”), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

The Panel finds that expungement is appropriate because the claim information is false. The Panel finds that Claimant authorized her broker to follow her son’s advice and he did just that.

3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, are 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	= \$ 1,725.00
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	= \$ 2,475.00
Member Process Fee	= \$ 5,075.00

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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$ 450.00
Pre-Hearing Conference: October 29, 2021 1 session	
Two (2) pre-hearing sessions with the Panel @ \$1,300.00/session	= \$ 2,600.00
Pre-Hearing Conferences: June 28, 2021 1 session	

	December 2, 2021	1 session	
Nine (9) hearing sessions @ \$1,300.00/session			= \$ 11,700.00
Hearings:	December 8, 2021	2 sessions	
	December 9, 2021	2 sessions	
	December 10, 2021	1 session	
	January 5, 2021	2 sessions	
	January 6, 2021	2 sessions	
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Total Hearing Session Fees			= \$ 14,750.00

The Panel has assessed \$6,500.00 of the hearing session fees to Claimant.

The Panel has assessed \$8,250.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Veronica Ann Williams	-	Public Arbitrator, Presiding Chairperson
Patricia Kathleen Costello	-	Public Arbitrator
Virginia Mary Hunt	-	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

Veronica Ann Williams

Veronica Ann Williams
Public Arbitrator, Presiding Chairperson

01/28/2022

Signature Date

Patricia Kathleen Costello

Patricia Kathleen Costello
Public Arbitrator

01/28/2022

Signature Date

Virginia Mary Hunt

Virginia Mary Hunt
Public Arbitrator

01/28/2022

Signature Date

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January 28, 2022

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