

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

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In the Matter of the Arbitration Between:

Richard D. Lenard IRA, (Claimant) vs. L.H. Ross & Company, Inc., Craig Brandwein, and Frank Michelin, (Respondents)

Case Number: 01-01304

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Richard D. Lenard IRA, hereinafter referred to as "Claimant": Delmer C. Gowing, III, Esq., Delmer C. Gowing, III, P.A., Delray Beach, FL.

Respondents, L.H. Ross & Company, Inc. ("Ross"), Craig Brandwein ("Brandwein"), and Frank Michelin ("Michelin"), hereinafter collectively referred to as "Respondents": Alan P. Fraade, Esq., Mintz & Fraade, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 13, 2001.  
Claimant signed the Uniform Submission Agreement.

Joint Statement of Answer filed by Respondents on or about: August 16, 2001.  
Ross signed the Uniform Submission Agreement: November 5, 2001.  
Brandwein signed the uniform Submission Agreement: August 16, 2001.  
Michelin signed the Uniform Submission Agreement: November 5, 2001.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; failure to supervise; fraud; and common law negligence. Claimant's claim involved unspecified stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant does not have standing to bring the claims set forth in the Statement of Claim; the Statement of Claim fails to state a claim upon which relief can be granted; at all material times, Claimant knew and was aware of the risks associated with the investments and voluntarily chose to assume those risks; at all material times, and in all matters relevant to the allegations contained in the Statement of Claim, Ross acted in good faith; Claimant failed to exercise due diligence or reasonable care; Claimant knew, or in the exercise of the required degree of care and due diligence should have known, of the existence of those matters alleged to constitute violations of law that form

Claimant's claim; Claimant acted in willful and reckless disregard of those facts and matters alleged to constitute violations or causes of action complained of; Claimant ratified or acquiesced in some or all of the matters alleged to constitute violations or claims; Ross had no duty, contractual or otherwise, to disclose or inform Claimant of any facts other than those which were disclosed, nor did Ross breach any duty owed to Claimant, if such duty existed; Ross has, and had at all relevant times, procedures in place with respect to compliance and sales procedure; the actions of Ross are not the proximate cause of Claimant's alleged damages; Claimant failed to mitigate the damages alleged to have been incurred; Claimant's claims are barred by Claimant's own contributory negligence; Claimant authorized, accepted, and/or ratified each of the transactions of which he now complains; Claimant's accounts were invested in accordance with his investment objectives; any losses sustained by Claimant are attributable to market conditions and to his own investment decisions, not to any action or inaction on Ross' part; Ross' handling of Claimant's account was consistent with the standards and practices of the securities industry; Claimant's intentionally misleading and blatantly false Statement of Claim shows a pattern of deceit which puts into the merit of each and every one of Claimant's assertions; at no time did Brandwein engage in any conduct to warrant the award of punitive damages; and Claimant's commencement of this proceeding and the allegations he made against Ross are baseless and without merit.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$750,000.00, plus interest, attorneys' fees, punitive damages, and costs.

Respondents requested that the Panel:

- a. Dismiss the Statement of Claim in its entirety and declare that Respondents are not liable to Claimant in any respect, in law or equity, based upon the evidence presented;
- b. Award attorneys' fees and costs to Respondents with respect to defending against Claimant's baseless claims; and
- c. Grant such other and further relief as is deemed appropriate.

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

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **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. Claimant's claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby 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	= \$ 375.00
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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 firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, L.H. Ross & Company, Inc. is a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

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

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

One (1) Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: December 18, 2001	1 session

Four (4) Hearing sessions x \$1,200.00		= \$4,800.00
Hearing Dates:	May 8, 2002	2 sessions
	May 9, 2002	2 sessions
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Total Forum Fees		= \$6,000.00

1. The Panel has assessed \$3,000.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,000.00 of the forum fees jointly and severally against Respondents.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant, returned check fee, \$15.00.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$3,000.00
<u>Administrative Costs</u>	= \$ 15.00
Total Fees	= \$3,390.00
<u>Less payments</u>	= \$1,590.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,800.00

2. Ross be and hereby is solely liable for:

<u>Member Fees</u>	= \$6,100.00
Total Fees	= \$6,100.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Dispute Resolution, Inc.	= \$5,600.00

3. Respondents be and hereby are jointly and severally liable for:

<u>Forum Fees</u>	= \$3,000.00
<u>Total Fees</u>	= \$3,000.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$3,000.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Lawrence S. Brick, Esq.	-	Public Arbitrator, Presiding Chair
Anthony Michael Sabino, Esq.	-	Public Arbitrator
Brian S. Hamburger, Esq.	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

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.

  
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Lawrence S. Brick, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Anthony Michael Sabino, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Brian S. Hamburger, Esq.  
Industry Arbitrator

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

June 18, 2002

\_\_\_\_\_  
Date of Service (For NASD office use only)

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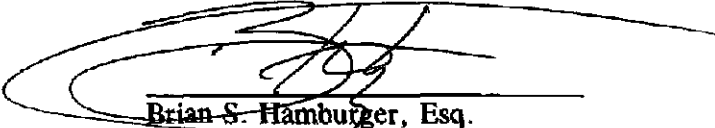
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Public Arbitrator

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