

**AWARD****NASD Dispute Resolution, Inc.**

In re Arbitration of:

Name of Claimant

L.C.H., INC., a domestic corporation,

and

Name of Respondents

PETER RUSSELL KOLESAR, an  
individual; NEW ENGLAND  
SECURITIES CORPORATION, a foreign  
corporation,

Respondents.

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01-01438  
Phoenix, Arizona

**REPRESENTATION OF PARTIES**

L.C.H., Inc. ("Claimant") was not represented by counsel.

New England Securities Corp. ("Respondent New England") was represented by Charles W. Herf, Esq., Robert N. Mann, Esq. and Kerry K. Patterson, Esq., Quarles & Brady Streich Lang LLP, Phoenix, Arizona.

**CASE INFORMATION**

Claimant's Statement of Claim was filed on or about March 12, 2001. Respondent New England filed an Answer to the Statement of Claim on May 14, 2001. On December 31, 2001, Respondent New England filed a Motion to Dismiss on Statute of Limitations Grounds. On January 16, 2002, Claimant filed its Response to the Motion to Dismiss.

**CASE SUMMARY**

Claimant's position is set forth in the Statement of Claim. Claimant made allegations of fraud, fraudulent omission, misrepresentation, negligence, negligent supervision, and breach of fiduciary duty.

In the Answer to the Statement of Claim, Respondent New England specifically denied the allegations made in the Claimant's Statement of Claim.

**RELIEF REQUESTED**

Claimant requested relief as set forth in the Statement of Claim.

Respondent requested that Claimant take nothing by its claims, and that Respondent be awarded its costs of defending this action, including reasonable attorneys' fees and all other just and equitable relief.

### **ISSUES CONSIDERED & DECIDED AT THE HEARING**

The arbitration hearing was set for April 24, 2002. One day before the hearing, Claimant requested a postponement because it was without legal counsel. On the day of the scheduled hearing, the panel met and considered the Claimant's request. Given that the panel had already granted Claimant one postponement and that Respondent New England had already incurred significant costs and expenses in preparing for the scheduled arbitration, the panel unanimously concluded that (1) Claimant would be liable for Respondent New England's attorneys' fees and costs in preparing for the scheduled arbitration, and (2) Claimant had until May 15, 2002 to notify the panel of its new legal counsel. Claimant never contacted the panel. Therefore, on June 4, 2002, the panel issued an order directing Claimant to pay Respondent New England's attorneys' fees and costs in the amount of \$26,768.86 by July 12, 2002, and advised Claimant that failure to do so would result in the dismissal of the action. As of September 2002, Claimant has failed to pay Respondent New England's attorneys' fees and costs. Consistent with the panel's order, the Statement of Claim is dismissed effective July 12, 2002.

### **AWARD**

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

1. The undersigned hereby dismiss, with prejudice, Claimant's Statement of Claim, effective as of July 12, 2002.
2. Claimant is liable for and shall pay Respondent New England \$26,768.86 in costs and attorneys' fees incurred in preparing for the scheduled arbitration that was postponed at Claimant's request.
3. Any relief not specifically granted herein is denied.
4. This award is effective as of July 12, 2002, which is the date that LCH, Inc. was required to pay attorneys' fees for counsel for New England and failed to do so.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$375.00
Cross claim filing fee	= \$500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is New England Securities Corp.

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

Hearing process fee = \$3,500.00

### Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s), February 25, 2002 through March 1, 2002 adjournment requested by Claimant = \$1,200.00

Hearing Date(s), April 24, 2002 through April 27, 2002 adjournment requested by Claimant = \$1,500.00

### Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

Three (3) Pre-hearing session(s) with Panel x \$1,200.00 = \$3,600.00

Pre-hearing conference(s): September 24, 2001 1 session  
October 22, 2001 1 session  
February 25, 2002 1 session

One (1) Hearing sessions x \$1,200.00 = \$1,200.00

Hearing Date(s): April 24, 2002 1 session

Total Forum Fees = \$4,800.00

The Arbitration Panel has assessed \$2,800.00 of the forum fees to L.C.H, Inc.

The Arbitration Panel has assessed \$2,000.00 of the forum fees to New England Securities Corp.

### Fee Summary

Claimant, L.C.H, Inc., shall be and hereby is liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$2,700.00
<u>Forum Fees</u>	<u>= \$2,800.00</u>
Total Fees	= \$5,875.00
<u>Less payments</u>	<u>= \$1,575.00</u>
Balance Due NASD Dispute Resolution	= \$4,300.00

Respondent, New England Securities Corp., shall be and hereby is liable for:

Type Filing Fee	= \$ 500.00
Member Fees	= \$6,100.00
<u>Forum Fees</u>	<u>= \$2,000.00</u>
Total Fees	= \$8,600.00
<u>Less payments</u>	<u>= \$8,600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Concurring Arbitrators:



Robert S. McConnell, Esq., Chairperson

April 3, 2003

Date

\_\_\_\_\_  
Brian R. Warnock, Esq., Public Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
James W. Warren, Industry Arbitrator

\_\_\_\_\_  
Date

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

Concurring Arbitrators:

\_\_\_\_\_  
Robert S. McConnell, Esq., Chairperson

\_\_\_\_\_  
Date

\_\_\_\_\_  
Brian R. Warnock, Esq., Public Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
James W. Warren, Industry Arbitrator

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Date

**All balances are due to NASD Dispute Resolution**

**ARBITRATION PANEL**

**Concurring Arbitrators:**

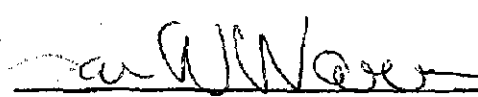
APR 15 2003

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**Robert S. McConnell, Esq., Chairperson**

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**Date**

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**Brian R. Warnock, Esq., Public Arbitrator**

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**Date**

  
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**James W. Warren, Industry Arbitrator**

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**Date**

4-8-03