

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

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In the Matter of the Arbitration Between:

Charles D. Finster, Executor for the Estate of Charles R. Hoenisch, Claimant v. L.H. Ross & Co., Inc., Joseph Ferragamo and Adam Klein, Respondents

Case Number: 01-01456

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

For Claimant Charles R. Hoenisch:

Cory B. Chartrand, Esq.  
Triebisch, Frampton, Dorius & Lima  
Turlock, California

For Respondent L.H. Ross & Co., Inc.:

Alan P. Fraade, Esq.  
Mintz & Fraade  
New York, New York

For Respondent Joseph Ferragamo:

Joseph Ferragamo  
In Propia Persona  
Staten Island, New York

For Respondent Adam Klein:

Adam Klein  
In Propia Persona  
Brooklyn, New York

### **CASE INFORMATION**

Statement of Claim filed: March 22, 2001

Claimant's Uniform Submission Agreement signed: May 15, 2001

Statement of Answer and Cross-Claim filed by Respondent L.H. Ross & Co., Inc.:  
July 17, 2001

Respondent L.H. Ross & Co., Inc.'s Uniform Submission Agreement signed: July 13, 2001

Statement of Answer filed by Respondent Joseph Ferragamo: January 25, 2002

Respondent Joseph Ferragamo's Uniform Submission Agreement signed: None submitted

Statement of Answer and Cross-Claim filed by Respondent Adam Klein: February 11, 2002

Respondent Adam Klein's Uniform Submission Agreement signed: None submitted

### **CASE SUMMARY**

Claimant alleged breach of contract, negligence, failure to supervise, failure to transfer account, breach of fiduciary duty, misrepresentation/non-disclosure, unauthorized trading, omission of facts and suitability, involving the common stock of Evans Systems, Inc.

Respondents L.H. Ross & Co., Inc., Joseph Ferragamo, and Adam Klein each denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

Respondent L.H. Ross & Co., Inc. filed a Cross-Claim against Respondents Joseph Ferragamo and Adam Klein alleging that any loss suffered by Claimant was caused by the advice given by Joseph Ferragamo and Adam Klein.

Respondent Adam Klein filed a Cross-Claim against Respondents L.H. Ross & Co., Inc. alleging failure to follow company procedures, negligence, and that Respondent Joseph Ferragamo and Adam Klein were acting as agents of Respondent L.H. Ross & Co., Inc.

**RELIEF REQUESTED**

Claimant requested \$65,000.00, plus interest, unspecified punitive damages, attorney's fees and costs.

Respondent L.H. Ross requested dismissal of the Claimant's Statement of Claim in its entirety and reimbursement of attorney's fees.

Respondent Joseph Ferragamo requested dismissal of the Claimant's Statement of Claim in its entirety.

Respondent Adam Klein requested dismissal of the Claimant's Statement of Claim in its entirety, reimbursement of costs in the amount of \$5,000.00, and expungement.

In its Cross-Claim, Respondent L.H. Ross & Co., Inc. requested that any liability found in Claimant's favor be assessed to Respondents Joseph Ferragamo and Adam Klein.

In his Cross-Claim, Respondent Adam Klein requested that any liability found in Claimant's favor be assessed to Respondent L.H. Ross & Co., Inc.

**OTHER ISSUES CONSIDERED AND DECIDED**

Shortly before the hearing, counsel for Respondents Joseph Ferragamo and Adam Klein withdrew his representation of Respondents. Respondent Joseph Ferragamo represented himself at the hearing. Respondent Adam Klein entered into a settlement agreement with the Claimant and, therefore, only appeared telephonically as a witness at the hearing.

Respondents Joseph Ferragamo and Adam Klein did not file with the NASD Dispute Resolution, Inc. a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and having answered the claim, and Respondent Joseph Ferragamo having appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents L.H. Ross & Co., Inc. and Joseph Ferragamo are jointly and severally liable to and shall pay Claimant the sum of \$15,000.00.
2. Respondent L.H. Ross & Co., Inc. is liable to and shall pay Claimant the sum of \$27,157.00.
3. Respondent L.H. Ross & Co., Inc. is liable to and shall pay Claimant interest in the amount of 10% per annum on \$47,157.00 from September 1, 2000, until the date Respondent L.H. Ross & Co., Inc. pays its portion of compensatory damages to Claimant. The principal amount noted includes consideration of claims previously settled by other parties.
4. Respondent L.H. Ross & Co., Inc. is liable to and shall pay Claimant the sum of \$12,000.00 in attorney's fees, pursuant to Colorado Statute §13-17-102.
5. Respondent L.H. Ross & Co., Inc. is liable to and shall pay Claimant the sum of \$1,055.00.
6. The Cross-Claims filed by Respondents L.H. Ross & Co., Inc. and Adam Klein are denied.
7. Except as noted above, the parties shall bear their respective costs, including attorney's fees.
8. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Claimant's Initial claim filing fee	= \$ 225.00
Respondent L.H. Ross & Co., Inc.'s Cross-Claim	= \$ 1,000.00
Respondent Adam Klein's Cross-Claim	= \$ 225.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm L.H. Ross & Co., Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 1,500.00
<b>Total Member Fees</b>	<b>= \$ 3,100.00</b>

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel.

The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ \$750.00/session	= \$ 1,500.00
Pre-hearing conferences:	
December 17, 2001	1 session
April 25, 2002	1 session
Three (3) Hearing sessions @ \$750.00/session	= \$ 2,250.00
Hearings:	
April 29, 2002	3 sessions
<b>Total Forum Fees</b>	<b>= \$ 3,750.00</b>

1. The Panel assessed \$750.00 of the forum fees to Claimant Charles D. Finster, Executor for the Estate of Charles R. Hoenisch.
2. The Panel assessed \$3,000.00 of the forum fees to Respondent L.H. Ross & Co., Inc.

**(1) Fee Summary**

1. Claimant Charles D. Finster, Executor for the Estate of Charles R. Hoenisch is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 750.00
Total Fees	= \$ 975.00
<u>Less payments</u>	= \$( 975.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 0.00</b>

2. Respondent L.H. Ross & Co., Inc. is charged with the following fees and costs:

Cross-Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,100.00
<u>Forum Fees</u>	= \$ 3,000.00
Total Fees	= \$ 7,100.00
<u>Less payments</u>	= \$( 500.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 6,600.00</b>

3. Respondent Adam Klein is charged with the following fees and costs:

<u>Cross-Claim Filing Fee</u>	= \$ 225.00
Total Fees	= \$ 225.00
<u>Less payments</u>	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 225.00</b>

All balances are payable to NASD Dispute Resolution, Inc. and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Brian F. Kram, Esq.	-	Public Arbitrator, Presiding Chair
Jane A. Bardin	-	Public Arbitrator
Bradley C. Mitchell	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Brian F. Kram, Esq.  
Chair, Public Arbitrator

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Signature Date

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Jane A. Bardin  
Public Arbitrator

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Signature Date

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Bradley C. Mitchell  
Non-Public Arbitrator

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Signature Date


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Date of Service

**ARBITRATION PANEL**

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Jane A. Bardin	-	Public Arbitrator
Bradley C. Mitchell	-	Non-Public Arbitrator

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Chair, Public Arbitrator

  
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Signature Date

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Public Arbitrator

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Bradley C. Mitchell  
Non-Public Arbitrator

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Chair, Public Arbitrator

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Signature Date

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Jane A. Bardin  
Public Arbitrator

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Signature Date



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Bradley C. Mitchell  
Non-Public Arbitrator

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7-1-02  
Signature Date

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7/2/02  
Date of Service