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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Taboga Panama Mineral Corporation

Case Number: 03-00446

Names of the Respondents

R. K. Grace & Company, a dissolved Florida Corporation, and John D. Kaweske

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member Firm and Associated Person.

**REPRESENTATION OF PARTIES**

For Taboga Panama Mineral Corporation, hereinafter referred to as "Claimant": Richard B. Simring, Esq., Stroock & Stroock & Lavan, L.L.P., Miami, Florida.

R. K. Grace & Company, a dissolved Florida Corporation ("Grace"), did not appear.

For John D. Kaweske ("Kaweske"), hereinafter referred to as "Respondent": Stephen A. Mendelsohn, Esq., Greenberg Traurig, P.A., Boca Raton, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 21, 2003.

Claimant signed the Uniform Submission Agreement: December 7, 2002.

Statement of Answer filed by Respondent Kaweske on or about: February 27, 2003.

Respondent Kaweske did not file and executed Uniform Submission Agreement.

Motion for Leave to file Amended Statement of Claim and Amended Statement of Claim filed on or about: July 23, 2003.

Answer to Amended Statement of Claim filed by Respondent Kaweske on or about: August 13, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: violations of the United States securities laws; the laws of the state of Florida, including but not limited to, Section 10(b) and 20(a) of the Securities Exchange Act of 1934, Rule 10-b-5 promulgated thereunder, Section 517.301 of the Florida Statutes and the rules of NASD; breach of fiduciary duty; negligence; civil theft; and, successor liability. The causes of action relate to the unauthorized trades in Claimant's account. Additionally, in his Amended Statement of Claim, Claimant asserted the cause of action of "alter ego" liability/piercing the corporate veil.

Unless specifically admitted in his Answer, Respondent Kaweske denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, plus lost appreciation that the funds would have received had they been properly invested and not absconded; triple the commissions and mark-ups charged and taken by Respondents Grace and Kaweske; filing fees; costs; expert witness fees; punitive damages; and any further relief the Panel deemed just and proper. Additionally, Claimant did not waive its rights to have a Court of competent jurisdiction determine the entitlement and amount of attorneys' fees.

Respondent Kaweske requested dismissal of the Statement of Claim in its entirety, that all costs and forum fees be awarded to him. Further, Respondent Kaweske reserved the right to seek attorneys' fees from a Court of competent jurisdiction.

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

Respondent Kaweske did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

Respondent Grace did not appear at the evidentiary hearing on March 8-9, 2004. Upon review of the file and the representations made by Claimant, the Panel determined that Respondent Grace has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the Code.

On or about July 23, 2003, Claimant filed a Motion for Leave to file an Amended Statement of Claim, to which Respondent did not oppose. On or about August 18, 2003, the Panel granted Claimant's Motion for Leave to file Amended Statement of Claim.

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, 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:

Respondents are jointly and severally liable for negligence and breach of fiduciary duty and shall pay to Claimant compensatory damages of \$173,841.00.

Respondents are jointly and severally liable and shall pay to Claimant costs of \$95.00 for the

translator and \$150.00 for the long distance telephone call to Panama.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, Claimant's request for relief pursuant to Section 517.301 of the Florida Statutes, and the parties' request for attorneys' fees, are denied.

### **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 = \$ 250.00

#### **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. In this matter, the member firm, Cardinal Capital Management, Inc. employed the associated person at the time of the events giving rise to the dispute.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,200.00</u>
Total Member Fees	= \$4,450.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred in this matter.

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

The Panel has assessed forum fees for each session conducted. A 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 the Panel @ \$1,000.00 per session	= \$1,000.00
Pre-hearing conference: July 8, 2003 1 session	

NASD Dispute Resolution

Arbitration No. 03-00446

Award Page 4 of 5

Four (4) Hearing sessions @ \$1,000.00 = \$4,000.00

Hearing Dates: March 8, 2004 2 sessions

March 9, 2004 2 sessions

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Total Forum Fees = \$5,000.00

The Panel assessed the total forum fees of \$5,000.00 to Respondents, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee = \$ 250.00

Total Fees = \$ 250.00

Less payments = \$ 250.00

Balance Due NASD Dispute Resolution = \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees = \$5,000.00

Total Fees = \$5,000.00

Less payments = \$ 0.00

Balance Due NASD Dispute Resolution = \$5,000.00

Non-Party Cardinal Capital Management is solely liable for:

Member Fees = \$4,450.00

Total Fees = \$4,450.00

Less payments = \$4,450.00

Balance Due NASD Dispute Resolution = \$ 0.00

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

**ARBITRATION PANEL**

Myron S. Dunay, Esq.

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Public Arbitrator, Presiding Chairperson

Bernard J. Kune

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Public Arbitrator

Marc S. Piven

-

Non-Public Arbitrator

NASD Dispute Resolution

Arbitration No. 03-00446

Award Page 5 of 5

**Concurring Arbitrators' Signatures**

/s/

Myron S. Dunay, Esq.

Public Arbitrator, Presiding Chairperson

03/23/04

Signature Date

/s/

Bernard J. Kune

Public Arbitrator

03/20/04

Signature Date

/s/

Marc S. Piven

Non-Public Arbitrator

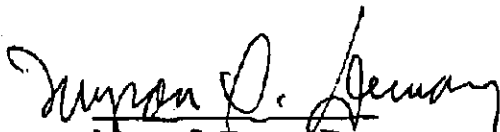
03/22/04

Signature Date

03/24/04

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 03-00446  
Award Page 5 of 5



Myron S. Dunay, Esq.  
Public Arbitrator, Presiding Chairperson

3/23/04  
Signature Date

\_\_\_\_\_  
Bernard J. Kune  
Public Arbitrator

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

\_\_\_\_\_  
Marc S. Piven  
Non-Public Arbitrator

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

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Myron S. Dunay, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

*Bernard J. Kune*  
Bernard J. Kune  
Public Arbitrator

*3/29/04*  
Signature Date

Marc S. Piven  
Non-Public Arbitrator

Signature Date

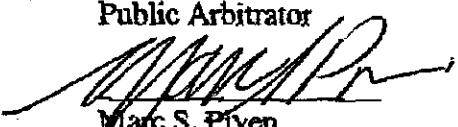
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Myron S. Dunay, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Bernard J. Kune  
Public Arbitrator

Signature Date

  
Marc S. Piven  
Non-Public Arbitrator

3/22/04  
Signature Date

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