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

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In the Matter of the Arbitration Between:

Name of the Claimant

Kenneth L. Pike and Kenneth L. Pike IRA

Case Number: 05-03522

Names of the Respondents

Mitchell Weisberg

Jordan Scales

Marc Kimmell

Franklyn R. Michelin

John Kawas

Hearing Site: Atlanta, Georgia

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Nature of the Dispute: Customer vs. Associated Person.

**REPRESENTATION OF PARTIES**

For Kenneth L. Pike and Kenneth L. Pike IRA , hereinafter referred to as "Claimant": Martin S. Siegel, Esq., BrownRudnick, New York, New York.

Respondent Mitchell Weisberg ("Weisberg"), did not appear.

Respondent Jordan Scales ("Scales"), appeared pro se.

Respondent Marc Kimmell ("Kimmell"), did not appear.

Respondent Franklyn R. Michelin ("Michelin"), appeared pro se.

Respondent John Kawas ("Kawas"), appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: July 11, 2005.

Claimant signed the Uniform Submission Agreement: March 1, 2005.

Statement of Answer filed by Respondent Scales on or about: March 8, 2006.

Statement of Answer filed by Respondent Kawas on or about: November 14, 2005.

Respondents did not file signed Uniform Submission Agreements.

Respondents Michelin, Kimmell and Weisberg did not file Statement of Answers.

Motion to Compel or, in the alternative, to Strike Answers or Preclude Evidence filed by Claimant on or about: May 12, 2006.

Motion to Appear Telephonically filed by Respondent Kawas on or about: June 2, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: 1) violation of federal and state securities laws; 2) violation of various rules and regulations of the NYSE and NASD; 3) fraud; 4) mismanagement; 5) negligence; 6) breach of fiduciary duty; 7) violation of the Securities Act of 1933; 8) omissions and misrepresentations; and, 9) respondeat superior and control person liability. The causes of action relate to the purchase of various, unspecified securities placed through private placement offerings in Claimant's accounts.

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

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$52,020.00, attorney's fees, interest, costs and punitive damages in an amount three times the compensatory damages.

Respondent Kawas requested that the Statement of Claim be dismissed in its entirety and award of such other and further relief as this Panel deemed just and proper.

Respondent Scales requested that he be dismissed from this matter.

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

Respondents Kawas, Michelin, Weisberg, Kimmel and Scales did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code"). Respondent Michelin appeared at the telephonic pre-hearings, Respondents Scales and Kawas answered the claim, and Respondent Kawas testified at the evidentiary hearing telephonically. Respondents Michelin, Scales, Kawas and Weisberg are bound by the determination of the Panel on all issues submitted.

Respondents Michelin, Scales and Weisberg did not appear at the evidentiary hearing. Upon review of the file and the representations made by/on behalf of the Claimants, the undersigned arbitrators (the "Panel") determined that Respondents Michelin, Scales and Weisberg have been properly served with the Statement of Claim and that Respondents Michelin and Scales received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the Code.

The Panel determined that NASD Dispute Resolution was not able to perfect service upon Respondent Kimmell and made no further determination as to this Respondent.

On June 9, 2006, the panel issued an Order that granted Respondent Kawas' Motion to Appear Telephonically.

The Panel deemed Claimant's Motion to Compel or, in the alternative, to Strike Answers or Preclude Evidence moot.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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 Michelin, Kawas, Scales and Weisberg are found jointly and severally liable for violation of federal and state securities laws, violation of various rules and regulations of the NYSE and NASD, fraud, mismanagement, negligence, breach of fiduciary duty, violation of the Securities Act of 1933, omissions and misrepresentations, respondeat superior and control person liability and shall pay to Claimant compensatory damages in the amount of \$52,020.00, plus interest in the amount of 8% per annum from June 12, 2006 until the date of payment of the Award.

Respondents Michelin, Kawas, Scales and Weisberg are found jointly and severally liable and shall pay to Claimant punitive damages in the amount of \$156,060.00. All the Respondents in this matter have been sanctioned by the SEC, NASD and/or federal prosecutors for schemes to defraud investors in connection with the sale of L.H. Ross & Co. securities.

Respondents Michelin, Kawas, Scales and Weisberg are found jointly and severally liable and shall pay to Claimant attorney's fees in the amount of \$15,000.00 pursuant to the Georgia attorney's fees statute based on stubbornly litigious grounds.

Respondents Michelin, Kawas, Scales and Weisberg are found jointly and severally liable and shall pay to Claimant the sum of \$300.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein, 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	= \$ 300.00
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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 person at the time of the events giving rise to the dispute. L.H. Ross & Co. is the firm that employed the associated persons at the time of the events giving rise to the dispute. L.H. Ross & Co. is a terminated member of NASD and defunct. Therefore, member fees were not assessed against L.H. Ross & Co.

**Adjournment Fees**

No requests for adjournments were filed in this matter.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed 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 during 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 @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: March 13, 2006 1 session	
One (1) Hearing session with the Panel @ \$1,125.00	= \$ 1,125.00
Hearing Date: June 12, 2006 1 session	
Total Forum Fees	= \$ 2,250.00

The Panel has assessed the total forum fees of \$2,250.00 jointly and severally to Respondents Michelin, Kawas, Weisberg and Scales.

**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 during this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Total Fees	= \$ 300.00
Less payments	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Michelin, Kawas, Weisberg and Scales are jointly and severally liable for:

Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,250.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

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

**ARBITRATION PANEL**

<i>Ellwood F. Oakley, III, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Sabrina Raquel Scott, Esq.</i>	-	<i>Public Arbitrator</i>
<i>M. Bruce Adelberg</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Ellwood F. Oakley, III, Esq.  
Public Arbitrator, Presiding Chairperson

06/14/06  
Signature Date

/s/  
Sabrina Raquel Scott, Esq.  
Public Arbitrator

06/15/06  
Signature Date

/s/  
M. Bruce Adelberg  
Non-Public Arbitrator

06/14/06  
Signature Date

06/15/06  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
 Arbitration No. 05-03522  
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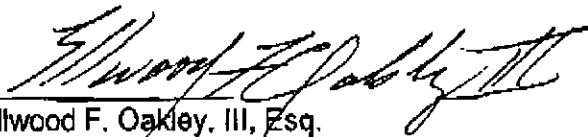
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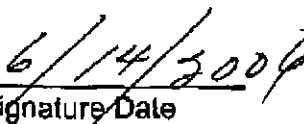
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Public Arbitrator, Presiding Chairperson  
 Public Arbitrator  
 Non-Public Arbitrator

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 Public Arbitrator

Signature Date

6/15/06

Signature Date

M. Bruce Adelberg  
 Non-Public Arbitrator

Signature Date

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

FROM :

Jun. 14. 2006 4:59PM

Jun. 14 2006 06:36PM P1

No. 2636 P. 6/6

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Arbitration No. 05-03522  
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<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents Michelin, Kawas, Welsberg and Scales are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 2,250.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 2,250.00

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