

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Yang-Ho Kim and In-Ho Kim

93-03895

Name of Respondents

Josephthal, Lyon & Ross Inc.  
Frantz Lys Cajuste

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 24, 1993, Claimants Yang-Ho Kim and In-Ho Kim, who appeared Pro Se, alleged that Respondent Frantz Lys Cajuste ("Cajuste"), a broker at Respondent Josephthal, Lyon & Ross Inc., sold 500 SciClone Pharmaceuticals, Inc. ("SciClone") warrants from their account without their authorization. Claimants further alleged that they purchased the SciClone warrants at \$.20 per warrant, and had traded as high as \$10.00 a warrant since their purchase. As a result of the above, Claimants contended that they have suffered damages for which the Respondents should be held liable.

Respondents Josephthal, Lyon & Ross Inc. and Frantz Lys Cajuste, through Josephthal, Lyon & Ross Inc.'s in-house counsel Robert E. Murphy, Esq., New York, New York, maintained that on July 9, 1993, SciClone announced a redemption of the warrants in question whereby Claimants would receive \$.20 per warrant unless they exercised the warrants by August 6, 1993, which would require Claimants to purchase 500 shares of SciClone common stock at \$9.43 per share. Respondents further maintained that Claimants' cash account balance was a \$2,900.50 debit and could not support the \$4,715.00 cost of exercise of the warrants. Respondents contended that without a significant cash deposit the sale of the warrants was the only option available to Respondents to preserve Claimants' profit. Respondents further contended that Respondent Cajuste unsuccessfully tried to contact Claimants on three occasions between July 14,

1993 and August 4, 1993. Respondents maintained that since they could not delay any longer, on August 5, 1993 Respondent Cajuste sold Claimants' warrants at \$4.00 per warrant, thereby preserving Claimants' \$1,900.00 profit. As a result of the above, Respondents contended that they should not be held liable in this matter.

### **RELIEF REQUESTED**

Claimants Yang-Ho Kim and In-Ho Kim requested at least \$4,500.00 in actual damages, or in the alternative the return of their 500 SciClone Pharmaceuticals, Inc. warrants.

Respondents Josephthal, Lyon & Ross Inc. and Frantz Lys Cajuste requested that the Claimants' Statement of Claim be dismissed in its entirety.

### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Keith D. Patten, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 26, 1993, by Respondent Josephthal, Lyon & Ross Inc. on April 11, 1994, and by Respondent Frantz Lys Cajuste on April 11, 1994.

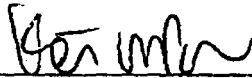
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants Yang-Ho Kim and In-Ho Kim against Respondents Josephthal, Lyon & Ross Inc. and Frantz Lys Cajuste are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

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**AFFIRMATION**

I, **KEITH D. PATTEN**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, appearing to read "Keith D. Patten", is written over a horizontal line.

Signature of Arbitrator

**DATE OF DECISION:** September 7, 1994