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**AWARD**

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimant(s)**

S. Kircher & Company  
D.B.A. Capitol Bay Securities

v.

Arbitration No.  
96-04955

**Name of Respondent(s)**

William Husa

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**REPRESENTATION**

For Claimant: Robert E. Gyemant, Esq., Knapp Petersen & Clarke, Glendale, California

For Respondent: William A. Husa, Gold River, California

**CASE INFORMATION**

Statement of Claim filed: November 6, 1996

Claimant's Submission Agreement signed: October 28, 1996

Statement of Answer filed: December 13, 1996

Respondent's Submission Agreement signed: December 10, 1996

**HEARING INFORMATION**

Pre-hearing telephone conferences lasting one session each were held on May 1, 1997, and July 18, 1997.

The hearing was held in San Francisco, California on August 25, 1997, and lasted 2 sessions.

### **CASE SUMMARY**

Claimant alleged that Respondent was responsible for an underlying transaction which resulted in an arbitration award against Claimant. Claimant alleged that Respondent not only sold the investment at issue in the underlying transaction (Pearce Systems), but was the syndicate manager for the investment, and personally performed the due diligence on Pearce Systems. Claimant further alleged that Respondent sold the investment in the underlying transaction to his son, helped his son pay for the purchase by loaning funds to his son, failed to recommend a suitable investment for his son, and then encouraged his son to bring the underlying arbitration matter against claimant in order to recover personal funds.

Respondent denied the allegations of the claim, and asserted that Claimant had misled its brokers with respect to Pearce Systems, that he was not, in fact, the syndicated manager for this investment, and that Claimant kept secret from its brokers the fact that the sale of Pearce Systems was in violation of the NASD rules of fair practice.

### **RELIEF REQUESTED**

Claimant requested damages of \$6,525.00.

Respondent requested dismissal of the claim.

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

The parties have agreed to receive conformed copies of the Award while the originals remain on file with NASDR.

### **AWARD**

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

1. The claim of Claimant is denied, and it takes nothing.

Claimant did not carry its burden of proof to show that Respondent was responsible to pay Claimant the \$6,525.00 that was awarded to Michael Husa and against Claimant in a prior NASD arbitration matter. For example, based on the evidence, the arbitrator finds that Respondent neither knew or should have known that there were suitability requirements with respect to the sale of units of Pearce Systems International, Inc. until two years after he had sold those securities

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to Michael Husa. There was insufficient evidence to show that Michael Husa met those suitability requirements at the time of the sale, or that if he did, the Respondent knew he met the suitability requirements. Claimant did not meet its burden of showing that, under the circumstances of this case, Respondent had the ultimate legal responsibility to pay the \$6,525.00 or that he was legally required to share that responsibility with Claimant.

2. The parties shall bear their respective costs, including attorney's fees.

### **FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure, the NASDR shall retain the Claimant's \$500.00 non-refundable filing fee; it shall also retain the \$300.00 hearing session deposit as an assessment of forum fees for 1 session.

Presiding Arbitrator's Signature:

*Robert L. Gorman*

Robert L. Gorman, Esq.  
Public Arbitrator

Date signed:

*September 9, 1997*