

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

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In the Matter of the Arbitration Between:

Perex Proprietary Ltd., (Claimant) vs. Roan Capital Partners, LP, Daniel J. Subarsky, Robert J. O'Brien, Tim Doran, and Jeff Orenstein, (Respondents)

Case Number: 99-05297

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Perex Proprietary Ltd., hereinafter referred to as "Claimant": Brian H. Reis, Esq., Brian Reis & Associates, New York, NY.

Respondents, Roan Capital Partners, LP ("Roan"), Daniel J. Subarsky ("Subarsky"), Tim Doran ("Doran"), and Jeff Orenstein ("Orenstein"): David A. Schrader, Esq., Raice Paykin Krieg & Schrader LLP, New York, NY.

Respondent, Robert J. O'Brien ("O'Brien"), appeared *pro se*. Previously represented by: David A. Schrader, Esq., Raice Paykin Krieg & Schrader LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: November 17, 1999.  
Claimant signed the Uniform Submission Agreement: November 4, 1999.

Statement of Answer filed by Respondents on or about: June 16, 2000.  
Roan did not sign a Uniform Submission Agreement.  
Subarsky signed the Uniform Submission Agreement: February 1, 2000.  
Doran signed the Uniform Submission Agreement: June 14, 2000.  
Orenstein signed the Uniform Submission Agreement: June 14, 2000.  
O'Brien signed the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; misrepresentations; unauthorized trades; negligence; churning; failure to supervise; and Respondeat Superior. Claimant's claim involved the stocks and warrants of Discas, Inc., Stac, Inc., Infu-Tech, Inc., Biotime, Inc., Kuala Healthcare, Inc., and Continental Health Affiliates.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's principal expressly informed Subarsky that he was a sophisticated investor with years of investment experience and a net worth of over \$20 Million dollars; any losses suffered by Claimant were a result of market fluctuations, fluctuations in the price of specific stocks, or poor performance by a specific stock; Claimant was well aware of the risks involved in stock trading; Claimant specifically informed Subarsky that its investment objectives were speculation and growth; no investments recommended to Claimant were unsuitable for Claimant's investment objectives; no complaint was ever made by Claimant regarding any trade in its account until the account suffered losses and approximately one year after the purported unauthorized transaction; and Claimant received written confirmation of all transactions in its account and had full knowledge of all transactions which were authorized.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$124,000.00, as well as forum fees, attorneys' fees, and punitive damages.

Respondents did not make any relief requests in their Statement of Answer.

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

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

The parties have 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:

1. All claims against Doran, Orenstein, and O'Brien are hereby dismissed in their entirety.
2. Roan and Subarsky be and hereby are jointly and severally liable for and shall pay to Claimant the sum of \$1,600.00 as compensatory damages.

3. Claimant's requests for punitive damages and attorneys' fees are hereby denied.

4. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

|                          |             |
|--------------------------|-------------|
| Initial claim filing fee | = \$ 300.00 |
|--------------------------|-------------|

#### **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, Roan Capital Partners, LP is a party.

|                         |               |
|-------------------------|---------------|
| Member surcharge        | = \$ 1,500.00 |
| Pre-hearing process fee | = \$ 600.00   |
| Hearing process fee     | = \$ 2,500.00 |

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

The Panel assesses forum fees for each hearing session conducted. A hearing 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 a single arbitrator x \$450.00 | = \$ 450.00 |
| Pre-hearing conference: November 14, 2000                       | 1 session   |

|   |               |
|---|---------------|
| One (1) Pre-hearing session with Panel x \$1,125.00 | = \$ 1,125.00 |
| Pre-hearing conference: August 30, 2000             | 1 session     |

|   |               |
|---|---------------|
| Eight (8) Hearing sessions x \$1,125.00 | = \$ 9,000.00 |
| Hearing Dates:                          |               |
| January 29, 2001                        | 2 sessions    |
| January 30, 2001                        | 2 sessions    |
| January 31, 2001                        | 2 sessions    |
| February 1, 2001                        | 2 sessions    |

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|                  |               |
|------------------|---------------|
| Total Forum Fees | = \$10,575.00 |
|------------------|---------------|

1. The Panel has assessed \$5,287.50 of the forum fees against Claimant.
2. The Panel has assessed \$5,287.50 of the forum fees against Roan.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

|   |                     |
|---|---------------------|
| Initial Filing Fee                        | = \$ 300.00         |
| Forum Fees                                | = \$5,287.50        |
| Total Fees                                | = \$5,587.50        |
| <u>Less payments</u>                      | <u>= \$1,425.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$4,162.50        |

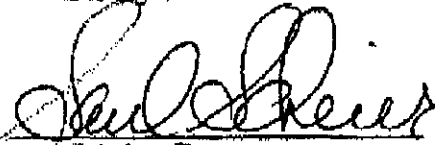
2. Roan be and hereby is solely liable for:

|   |                     |
|---|---------------------|
| Member Fees                               | = \$4,600.00        |
| Forum Fees                                | = \$5,287.50        |
| Total Fees                                | = \$9,887.50        |
| <u>Less payments</u>                      | <u>= \$2,100.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$7,787.50        |

All balances are due and payable to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Saul Scheier, Esq.  
Public Arbitrator, Presiding Chair

2/14/2001  
Signature Date

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Charles Fredericks, Jr., Esq.  
Public Arbitrator

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Signature Date

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Vicki R. Lawrence  
Industry Arbitrator

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Signature Date

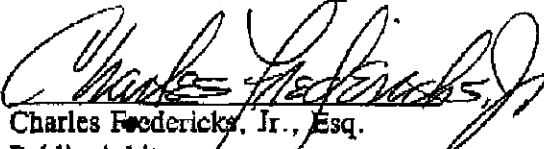
February 26, 2001  
Date of Service (For NASD office use only)

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Saul Scheier, Esq.  
Public Arbitrator, Presiding Chair

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

  
Charles Federicks, Jr., Esq.  
Public Arbitrator

2/21/01  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Vicki R. Lawrence  
Industry Arbitrator

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

February 26, 2001  
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Saul Scheier, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Charles Fredericks, Jr., Esq.  
Public Arbitrator

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Signature Date

*Vicki R. Lawrence*  

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Vicki R. Lawrence  
Industry Arbitrator

*2/21/2001*  

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Signature Date

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February 26, 2001  
Date of Service (For NASD office use only)