

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Adam J. Gebeau and Gary G. Gebeau, (Claimants) vs. E*Trade Securities, Inc., (Respondent)

Case Number: 00-00569

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Adam J. Gebeau ("Mr. Gebeau") and Gary G. Gebeau, hereinafter collectively referred to as "Claimants", appeared *pro se*.

Respondent, E*Trade Securities, Inc., hereinafter referred to as "Respondent": Robert J. McGahan, Esq., Bird, Marella, Boxer & Wolpert, Los Angeles, CA.

CASE INFORMATION

Statement of Claim filed on or about: January 29, 2000.

Claimants signed the Uniform Submission Agreement: January 29, 2000.

Statement of Answer filed by Respondent on or about: May 26, 2000.

Respondent did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: failure to advise Claimants that the options transactions they were entering into were uncovered and refusal to allow Claimants to realize the gain made on said options transactions. Claimants' claim involved ZYLAH call options.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: because Claimant was writing uncovered calls, his trading in these options would have resulted in obtaining gains via a form of "free riding" and Respondent was obligated by federal regulation to reverse the trades at issue in the Statement of Claim.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested compensatory damages in the amount of \$16,876.33. However, during the hearing in this matter, Claimants reduced the amount of compensatory damages sought to \$16,666.53.

Respondent requested that Claimants' Statement of Claim be dismissed in its entirety and that Claimants take nothing by their claim. In addition, Respondent requested that it be awarded its costs herein.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent 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 Arbitrator 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.

ARBITRATOR'S REPORT

Claimants were not granted relief since they engaged in uncovered options trading or "free riding" as defined by Regulation T. This was unintentional and should have been caught by Respondent. Respondent was enriched by \$16,666.53. Respondent's corporate representative, Michael Schoenberger, admitted that there were no systems in place to catch uncovered options trading. Mr. Gebeau's statement that he checked with two of Respondent's representatives to confirm the legality of his trades was uncontradicted. In other words, two of Respondent's representatives told him that his trades were allowable under the rules. The trades in fact were illegal under Regulation T, and Respondent's representatives should have known that and so informed Mr. Gebeau.

AWARD

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

1. Claimants' claims are hereby denied in their entirety.
2. 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 = \$ 125.00

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, E*Trade Securities, Inc. is a party.

Member surcharge = \$ 400.00

Adjournment Fees

Adjournments requested during these proceedings:

February 9, 2001, adjournment by Respondent = \$ 450.00

Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, 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: October 5, 2000 1 session

Two (2) Hearing sessions x \$450.00	= \$ 900.00
Hearing Date: March 2, 2001 2 sessions	
Total Forum Fees	= \$1,350.00

1. The Arbitrator has assessed the \$1,350.00 forum fees against Respondent.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 125.00
Total Fees	= \$ 125.00
Less payments	= \$ 575.00
Refund Due to Claimants	= \$ 450.00

2. Respondent be and hereby is solely liable for:

Member Fees	= \$ 400.00
Adjournment Fee	= \$ 450.00
Forum Fees	= \$1,350.00
Total Fees	= \$2,200.00
Less payments	= \$ 400.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,800.00

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

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Arbitrator's Signature

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.

Michael J. Maran
Michael J. Maran
Public Arbitrator

4/9/01
Signature Date

April 12, 2001
Date of Service (For NASD office use only)