

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:
Reid Breitman, Claimant v. E*Trade Securities, Inc., Respondent

Case Number: 00-03324

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

Jonathan Schwartz, Esq.
Law Offices of Jonathan Schwartz
Marina Del Rey, California

For Respondent:

Mark T. Dooks, Esq.
Bird, Marella, Boxer & Wolpert
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: August 3, 2002

Claimant's Uniform Submission Agreement signed: August 1, 2000

Statement of Answer filed by Respondent E*Trade Securities, Inc.: September 29, 2000

Respondent's Uniform Submission Agreement signed: September 20, 2000

CASE SUMMARY

Claimant alleged breach of contract, negligence, and delayed execution, all involving unspecified common stock.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested \$192,400.00 in actual damages, interest, and costs, including attorneys' fees and forum fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety, and requested reimbursement of arbitration costs.

OTHER ISSUES CONSIDERED AND DECIDED

At the evidentiary hearing, Claimant brought a motion for leave to amend the pleadings to include a new claim based on newly discovered evidence relating to allegations of improper trading. Claimant later withdrew the motion.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent E*Trade Securities, Inc. ("Respondent") did not breach the E*Trade Customer Agreement between Respondent and Reid Breitman ("Claimant"), or any related account applications, or any other agreements related to obligations owed by Respondent to its customers.
2. Claimant did not prove that Respondent violated any rules promulgated by the NASD, U.S. Securities and Exchange Commission or other regulatory agency.
3. Respondent was not negligent by its actions or inactions with respect to its handling of Claimant's telephone calls to place its order to sell Juniper Networks, Inc. on July 14, 2000. Claimant did not prove that any standard in the industry had been breached.
4. Respondent put in place a system to handle calls during high volume periods using customer service representatives to screen calls and route callers intending to trade to a queue for the next available broker at call centers in the U.S. An announcement was

made on the line if the wait would be longer than five minutes.

5. Claimant's call received by Respondent at approximately 6:43 a.m. was screened by a customer service representative and routed to a queue to speak with a broker for purposes of making a trade. Claimant hung up the telephone approximately two and one-half minutes after being transferred to the trading queue. The wait to speak with a broker was less than five minutes as no announcement had been made on the line that the wait was five minutes or longer.
6. Claimant's call received by Respondent at approximately 6:51 a.m. was screened by a customer service representative and transferred to a trading queue. There was a malfunction in the common carrier telephone system and the call was not connected to a broker for approximately 38 minutes. Respondent's internal system was functioning properly and no announcement had been made on the line that the wait would be longer than five minutes. Respondent is not responsible for the malfunctioning of a system controlled exclusively by a third party.
7. Claimant's call received by Respondent at approximately 6:59 a.m. was transferred by a customer service agent to a broker and a trade was placed at approximately 7:06 a.m.
8. Claimant's claims are denied in their entirety.
9. Claimant shall reimburse Respondent for travel expenses in the amount of \$389.20, to be paid on or before June 20, 2002.
10. Except as awarded above, the parties shall bear their respective costs, including attorneys' fees.
11. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm E*Trade Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
Total Member Fees	= \$ 4,600.00

Adjournment Fees

The following adjournment fees are assessed:

Hearing Dates, February 26 through 27, 2002, Adjournment requested by Claimant (fee waived by Panel)	= \$ 0.00
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Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel/Chair. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: May 8, 2002 1 session	
1 Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: October 23, 2001 1 session	
6 Hearing sessions @ \$1,125.00/session	= \$ 6,750.00
Hearings: May 21, 2002 2 sessions	
May 22, 2002 2 sessions	
June 13, 2002 2 sessions	
Total Forum Fees	= \$ 8,325.00

1. The Panel assessed \$ 4,162.50 of the forum fees to Claimant Reid Breitman.
2. The Panel assessed \$ 4,162.50 of the forum fees to Respondent E*Trade Securities, Inc.

Fee Summary

1. Claimant Reid Breitman is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 4,162.50
Total Fees	= \$ 4,462.50
<u>Less payments</u>	= \$ (1,425.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,037.50

2. Respondent E*Trade Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 4,162.50
Total Fees	= \$ 8,762.50
<u>Less payments</u>	= \$ (4,600.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 4,162.50

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

ARBITRATION PANEL

Steven A. Wawra, Esq.	-	Public Arbitrator, Presiding Chair
Evelyn Hynson-Woods, Esq.	-	Non-Public Arbitrator
Klaus H. Boerner	-	Public Arbitrator

Concurring Arbitrators' Signatures

Steven A. Wawra, Esq.
Chair, Public Arbitrator

Signature Date



Evelyn Hynson-Woods, Esq.
Public Arbitrator

6/26/02

Signature Date

Klaus H. Boerner
Non-Public Arbitrator

Signature Date

6/27/02

Date of Service

ARBITRATION PANEL

Steven A. Wawra, Esq.	-	Public Arbitrator, Presiding Chair
Evelyn Hynson-Woods, Esq.	-	Non-Public Arbitrator
Klaus H. Boerner	-	Public Arbitrator

Concurring Arbitrators' Signatures

Steven A. Wawra, Esq.
Chair, Public Arbitrator

Signature Date

Evelyn Hynson-Woods, Esq.
Public Arbitrator

Signature Date


Klaus H. Boerner
Non-Public Arbitrator

6.27.02
Signature Date

6/27/02
Date of Service