

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Marshall Numark, (Claimant) vs. DLJDirect, Inc., (Respondent)

Case Number: 00-03561

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Marshall Numark, hereinafter referred to as "Claimant", appeared *pro se*.

Respondent, DLJDirect, Inc., hereinafter referred to as "Respondent": Caroline K. Hall, Esq., Rosenman & Colin, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: August 9, 2000.

Opposition to the Motion to Dismiss filed by Claimant on or about: October 7, 2000.

Claimant signed the Uniform Submission Agreement: August 8, 2000.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: September 22, 2000.

Letter Brief in Support of its Motion to Dismiss filed by Respondent on or about: October 19, 2000.

Respondent signed the Uniform Submission Agreement: October 10, 2000.

CASE SUMMARY

Claimant asserted the following cause of action: Respondent failed to warn Claimant that he had placed an after hours order to buy stock that was trading at a price 27 points above the price at close of regular trading hours. Claimant's claim involved the stock of Time Warner Communications Inc.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim should be dismissed for failing to state a claim upon which relief can be granted; Claimant approved, authorized, and ratified the acts complained of and, accordingly, is precluded from asserting the same as a basis for recovery; Claimant's losses, if any, were caused by his own conduct and his negligence; Claimant, by his own conduct, has waived any and all claims that he may have against Respondent; Respondent discharged its responsibilities in good faith, in a professional and ethical manner, and all of Respondent's actions were within parameters of

accepted procedure and all applicable exchange and governmental regulations; Claimant did not rely to his detriment on any action or inaction of Respondent or omission legally attributable to Respondent; and Claimant's claims are barred by the doctrines of unclean hands and *in pari delicto*.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$5,400.00.

Respondent requested that the claims against it be dismissed in their entirety, and that Respondent be awarded its costs and expenses incurred, together with such other and further relief as is just, proper, and equitable.

OTHER ISSUES CONSIDERED AND DECIDED

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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby dismissed 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 = \$ 75.00

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, DLJDirect, Inc. is a party.

Member surcharge = \$300.00

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 \$250.00 = \$250.00
Pre-hearing conference: February 7, 2001 1 session

One (1) Hearing session x \$250.00 = \$250.00

Hearing Date: April 17, 2001 1 session

Total Forum Fees = \$500.00

1. The Arbitrator has assessed \$250.00 of the forum fees against Claimant.

2. The Arbitrator has assessed \$250.00 of the forum fees against Respondent.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 75.00
Forum Fees	= \$250.00
Total Fees	= \$325.00
Less payments	= \$325.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

2. Respondent be and hereby is solely liable for:

Member Fees	= \$300.00
Forum Fees	= \$250.00
Total Fees	= \$550.00
Less payments	= \$900.00
Refund Due Respondent	= \$350.00

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

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.



Veera V. Konka, Esq.
Public Arbitrator

Signature Date

May 1, 2001

Date of Service (For NASD office use only)