

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Hossein Danesh, Claimant v. E*Trade Securities, Inc., Respondent

Case Number: 00-03936

Hearing Site: San Francisco, CA

REPRESENTATION OF PARTIES

For Claimant:

Richard Sacks
Investor Recovery Service
2 Commercial Blvd.
Suite 203C
Novato, CA 94949

For Respondent:

John M. McCoy, Esq.
Bird, Marella, Boxer &
Wolpert
1875 Century Park East
23rd Floor
Los Angeles, CA 90067

CASE INFORMATION

Statement of Claim filed: September 11, 2000

Claimant's Uniform Submission Agreement signed: July 7, 2000

Statement of Answer filed by Respondent: November 7, 2000

Respondent's Uniform Submission Agreement signed: November 9, 2000

CASE SUMMARY

Claimant alleged that Respondent failed to give adequate notice to him before liquidating securities in his account to cover a maintenance call. Claimant further alleged that Respondent's electronic trading system experienced delays during the time the liquidation took place. Claimant also alleged that had Respondent had adequate personnel on hand and sufficient telephone accessibility, Claimant would have had adequate time to deposit funds into his account thereby preventing the liquidation.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim. Respondent further stated that its Customer Agreement with Claimant allowed it to liquidate the Claimant's account without prior notice. Respondent also stated that Claimant assumed the risks attendant to margin trading, that Claimant was contributorily and/or comparatively negligent in causing his own damages and that Claimant failed to take reasonable steps to mitigate his losses.

RELIEF REQUESTED

Claimant requested \$37,428 (loss of principal); reasonable reimbursement of costs and; special punitive damages in an amount the Panel deemed sufficient.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety. In addition, Respondent requested an award of its costs.

OTHER ISSUES CONSIDERED AND DECIDED

On June 25, 2001, Claimant filed a Motion to Recuse the Panel including, more specifically, a Motion to Recuse one of the panelists because of newly discovered information regarding an alleged conflict based on the past legal representation of the panelist's employer. On June 27, 2001, Respondent filed its response. On June 28, 2001, Claimant filed another Motion to Recuse the Panel. On July 2, 2001, Respondent submitted its response to that separate filing.

On July 5, 2001, the matter was submitted to the Director of Arbitration pursuant to Rule 10312(d) of the Code of Arbitration Procedure for review and ruling on the challenge to the one panelist based on alleged newly discovered information. On July 6, 2001, the NASD advised the parties that the Director of Arbitration had denied the challenge as to the one panelist. Also on July 6, 2001, the Claimant submitted a separate letter requesting that the entire Panel be advised of the Motion to Recuse. Respondent submitted its response to the Claimant's letter on July 6, 2001.

On July 9, 2001, the NASD forwarded a copy of the Motion to Recuse to the Panel. Each of the panelists reconfirmed separately their ability to remain on the case and to act and decide the matter impartially, fairly and without bias. Accordingly, the Motion was denied.

On or about July 9, 2001, Claimant filed, in San Francisco Superior Court, a Complaint for Temporary and Permanent Injunctive Relief, Declaratory Relief and Specific Performance. The pleading sought to enjoin the arbitration Panel, as constituted, from hearing or otherwise further participating in the arbitration of this case.

On July 10, 2001, the first day of the scheduled arbitration hearing, the parties and Panel met briefly. Thereafter, the arbitration hearing was adjourned to permit the parties to attend the hearing on the injunction. The parties returned that afternoon and advised the Panel and the NASD that the Court had denied the Complaint for Temporary and Permanent Injunctive Relief,

Declaratory Relief and Specific Performance. The arbitration hearing proceeded. At the end of the hearing, Claimant refused to acknowledge that he had received a fair hearing. Claimant did, however, acknowledge that he had no further evidence to present. The arbitration hearing concluded on July 10, 2001.

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) Claimant shall take nothing by his Statement of Claim. Further, the Panel finds no grounds for equitable relief from the terms of the Customer Agreement.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) 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	= \$ 175
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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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm is a party and the following fees are assessed:

Member Surcharge	= \$ 800
Pre-Hearing Process Fee	= \$ 600
<u>Hearing Process Fee</u>	<u>= \$1000</u>
Total Member Fees	= \$2400

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 Chair/Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$ 450/session	= \$ 450
Pre-hearing conference: May 14, 2001	1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$600/session	= \$1200
Pre-hearing conferences: March 26, 2001 1 session	
June 19, 2001 1 session	
Two (2) Hearing sessions @ \$600/session	= \$1200
Hearing: July 10, 2001 2 sessions	
Total Forum Fees	= \$2850

1. The Panel assessed \$1425 of the forum fees to Claimant.
2. The Panel assessed \$1425 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

Claimant requested copies of the three audiotapes of the arbitration hearing: =\$ 45

Fee Summary

Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 175
Forum Fees	= \$1425
<u>Administrative Costs</u>	<u>= \$ 45</u>
Total Fees	= \$1645
<u>Less Payments</u>	<u>= \$(820)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 825

Respondent is charged with the following fees and costs:

Member Fees	= \$2400
<u>Forum Fees</u>	<u>= \$1425</u>
Total Fees	= \$3825
<u>Less Payments</u>	<u>= \$(1400)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$2425

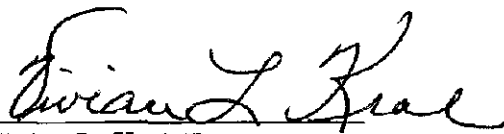
All balances are payable to NASD Dispute Resolution, Inc. and are payable upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

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ARBITRATION PANEL

Vivian L. Kral, Esq.	-	Public Arbitrator, Presiding Chair
Minnie Loo, Esq.	-	Public Arbitrator
Susan Boudrot, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Vivian L. Kral, Esq.
Chair, Public Arbitrator

8/10/01
Signature Date

Minnie Loo, Esq.
Public Arbitrator

Signature Date

Susan Boudrot, Esq.
Industry/Non-Public Arbitrator

Signature Date

Date Served:

AUG 13 2001

Date of Service

NASD Dispute Resolution, Inc.
Arbitration No. 00-03936
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