

**Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Donald Stephen Clark and Andrea Jeanette Clark, JTWROS and John M. Gustafson, as Trustee of the Clark Charitable Remainder Trust, Claimants v. E\*Trade Securities, Inc., Respondent

Case Number: 00-04003

Hearing Site: San Diego, California

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**REPRESENTATION OF PARTIES**

For Claimants:

Darvy Mack Cohan, Esq.  
Law Office of Darvy Mack Cohan  
La Jolla, California

For Respondent:

Dena L. Narbiatz, Esq.  
Michael J. Coffino, Esq.  
Steefel Levitt & Weiss  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: September 6, 2000

Claimants Donald Stephen Clark and Andrea Jeanette Clark, JTWROS's Uniform Submission Agreement signed: August 26, 2000

Claimant John M. Gustafson, as Trustee of the Clark Charitable Remainder Trust's Uniform Submission Agreement signed: August 17, 2000

Statement of Answer filed by Respondent: December 8, 2000

**CASE SUMMARY**

Claimants alleged negligence and breach of fiduciary duty. The dispute involved Medarex, Inc. stock.

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

**RELIEF REQUESTED**

Claimants Donald Stephen Clark and Andrea Jeanette Clark, JTWROS requested \$1,048,653.26 in compensatory damages, interest at the legal rate from February 28, 2000, and no later than March 6, 2000, until date of the award, attorney's fees, and arbitration costs. Claimant John M. Gustafson, as Trustee of the Clark Charitable Remainder Trust requested \$1,376,146.74 in compensatory damages, interest at the legal rate from February 28, 2000, and no later than March 6, 2000, until date of the award, attorney's fees, and arbitration costs.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety and reimbursement for arbitration costs.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent E\*Trade Securities, Inc. did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code 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 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, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

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

Initial claim filing fee	= \$ 500.00
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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 that 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	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 4,500.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,600.00</b>

**Adjournment Fees**

The following adjournment fees are assessed:

Hearing Dates, March 19, 2002 – March 22, 2002 adjournment requested by Respondent	= \$ 1,200.00
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Hearing Dates, March 10, 2003 – March 13, 2003 adjournment requested by Respondent	= \$ 1,500.00
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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 Arbitrator/Chair. The following fees are assessed:

(1) Pre-hearing conference session with the Chair @ \$ 450.00/session = \$ 450.00  
Pre-hearing conference: February 1, 2002 1 session

(3) Pre-hearing conference sessions with the Panel @ \$ 1,200.00/session = \$ 3,600.00  
Pre-hearing conferences: October 12, 2001 1 session  
May 7, 2002 1 session  
September 26, 2002 1 session

(8) Hearing sessions @ \$ 1,200.00/session = \$ 9,600.00  
Hearings: April 14, 2003 2 sessions  
April 15, 2003 2 sessions  
April 16, 2003 2 sessions  
April 17, 2003 2 sessions

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**Total Forum Fees = \$13,650.00**

1. The Panel assessed \$6,825.00 of the forum fees jointly and severally to Claimants Donald Stephen Clark and Andrea Jeanette Clark, JTWROS and John M. Gustafson, as Trustee of the Clark Charitable Remainder Trust.
2. The Panel assessed \$6,825.00 of the forum to Respondent E\*Trade Securities, Inc.

**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 sundry other requests.

Respondent E\*Trade Securities, Inc. requested copies of  
Arbitrators' past Awards: = \$ 70.00

**Fee Summary**

1. Claimants Donald Stephen Clark and Andrea Jeanette Clark, JTWROS and John M. Gustafson, as Trustee of the Clark Charitable Remainder Trust are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 6,825.00
Total Fees	= \$ 7,325.00
Less payments	= \$(1,700.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,625.00</b>

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

Member Fees	= \$ 7,600.00
Adjournment Fees	= \$ 2,700.00
Forum Fees	= \$ 6,825.00
Administrative Costs	= \$ 70.00
Total Fees	= \$17,195.00
Less payments	= \$(3,170.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$14,025.00</b>

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

**ARBITRATION PANEL**

Audrey H. Ruben, Esq.	-	Public Arbitrator, Presiding Chair
David Zollman	-	Public Arbitrator
James R. Collins	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

*Audrey H. Ruben*

Audrey H. Ruben, Esq.  
Chair, Public Arbitrator

4-25-03  
Signature Date

David Zollman  
Public Arbitrator

Signature Date

James R. Collins  
Non-Public Arbitrator

Signature Date

4/25/03  
Date of Service

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David Zollman	•	Public Arbitrator
James R. Collins	•	Non-Public Arbitrator

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Audrey H. Ruben, Esq.  
Chair, Public Arbitrator

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Signature Date

*David Zollman*  
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David Zollman  
Public Arbitrator

*Apr 25, 2003*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
James R. Collins  
Non-Public Arbitrator

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

*4/25/03*  
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Date of Service

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James R. Collins  
Non-Public Arbitrator

April 25, 2003  
Signature Date

4/25/03  
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