

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robin R. Madrigal and James M. Mosher, Claimants v. E*TRADE Securities, Inc., Respondent

E*TRADE Securities, Inc., Counter-Claimant v. Robin R. Madrigal and James M. Mosher,
Counter-Respondents

Case Number: 00-04459

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimants/Counter-Respondents

Robin R. Madrigal and James M. Mosher:

James M. Mosher
In Propria Persona
Palm Desert, California

For Respondent/Counter-Claimant

E*TRADE Securities, Inc.:

Joseph E. Floren, Esq.
Steefel, Levitt & Weiss
San Francisco, California

CASE INFORMATION

Statement of Claim filed by Claimants Robin R. Madrigal and James M. Mosher:
September 29, 2000

Amended Statement of Claim filed by Claimants Robin R. Madrigal and James M. Mosher:
September 14, 2003

Claimants Robin R. Madrigal's and James M. Mosher's Joint Uniform Submission Agreement
signed: September 26, 2000

Statement of Answer filed by Respondent E*TRADE Securities, Inc.: January 22, 2001

Counterclaim filed by Counter-Claimant E*TRADE Securities, Inc.: September 19, 2001

Respondent E*TRADE Securities, Inc.'s Uniform Submission Agreement signed: January 5,
2001

Statement of Answer filed by Counter-Respondents Robin R. Madrigal and James M. Mosher:
September 22, 2001

CASE SUMMARY

During the hearing Ms. Madrigal and Mr. Mosher stated that their causes of action were breach of fiduciary duty, excess commissions, negligence, failure to execute and violation of federal securities laws. Claimants' allegations concerned stock in EFAX, IDT Corporation ("IDTC") and various other common stock.

E*TRADE Securities, Inc. ("E*TRADE") denied the allegations of wrongdoing set forth in both Claimants' initial and Amended Statements of Claim. E*TRADE asserted various affirmative defenses.

E*TRADE filed a Counterclaim that alleged breach of contract, monies owed for debit balance, and bad faith in filing a frivolous arbitration claim.

Ms. Madrigal and Mr. Mosher denied the allegations of wrongdoing set forth in E*TRADE's Counterclaim.

RELIEF REQUESTED

Ms. Madrigal and Mr. Mosher requested \$43,600.00 in compensatory damages and \$130,800.00 in punitive damages.

E*TRADE requested dismissal of the Statement of Claim in its entirety and costs.

E*TRADE's Counterclaim requested \$263.41, interest from December 1, 1999 to date of the award at the applicable margin rate of interest, costs and attorney's fees.

Ms. Madrigal and Mr. Mosher requested dismissal of E*TRADE's Counterclaim.

OTHER ISSUES CONSIDERED AND DECIDED

On January 22, 2001, E*TRADE moved the Panel to Dismiss Claimants' Initial Statement of Claim. On August 24, 2001, a telephonic pre-hearing conference was held, attended by Claimants James Mosher and Robin Madrigal, Joseph E. Floren, Esq. and Chad D. Bernard, Esq., representing Respondent, and the Panel. After due deliberation the Panel granted the motion with respect to all claims except those relating to IDTC. The Panel provided, however, that Claimants' could file an Amended Statement of Claim on or before September 14, 2001.

On September 14, 2001, Claimants' filed an Amended Statement of Claim.

On September 19, 2001, E*TRADE moved the Panel for leave to file a Counterclaim. On October 4, 2001, a telephonic pre-hearing conference was held, attended by James Mosher, representing Claimants, Joseph E. Floren, Esq., representing Respondent, and the Panel. After due deliberation the Panel granted the motion.

On September 21, 2001, E*TRADE moved the Panel to Dismiss Claimants' Amended Statement of Claim. On October 4, 2001, a telephonic pre-hearing conference was held, attended by James Mosher, representing Claimants, Joseph E. Floren, Esq., representing Respondent, and the Panel. After due deliberation the Panel granted the motion with respect to all claims except those relating to IDTC and EFAX.

On October 24, 2001, Claimants moved the Panel to Reconsider Denial of Claimants' Motion to Compel and for Sanctions. On February 11, 2002, Ms. Madrigal and Mr. Mosher moved the Panel for Interim Relief and for Fines and Censure of E*TRADE for Obstruction and Perjury. On January 8, 2003, a telephonic pre-hearing conference was held, attended by James Mosher, representing Claimants, Joseph E. Floren, Esq., representing Respondent, and the Panel. After due deliberation, the Panel granted Claimants' Motion to Reconsider Denial of Claimants' Motion to Compel and denied Claimants Motion for Interim Relief and for Fines and Censure for Obstructions and Perjury.

On April 9, 2003, Claimants made a Motion for Immediate Monetary Relief and Sanctions. On April 14, 2003, Ms. Madrigal and Mr. Mosher moved the Panel for leave to file a Second Amended Statement of Claim. On April 14, 2003, a telephonic pre-hearing conference was held, attended by James Mosher, representing Claimants, Joseph E. Floren, Esq., representing Respondent, and the Panel. After due deliberation the Panel denied without prejudice both Claimants' Motion to file a Second Amended Statement of Claim and Motion for Sanctions.

On April 30, 2003, Claimants moved the Panel for Summary Judgment and for leave of file a Second Amended Statement of Claim. On June 10, 2003, a telephonic pre-hearing conference was held, attended by James Mosher, representing Claimants, Travis E. Wall, Esq., representing Respondent, and the Panel. After due deliberation, the Panel denied without prejudice Ms. Madrigal's and Mr. Mosher's request to file an Amended Statement of Claim and took under submission the Motion for Summary Judgment, stating that the Panel would issue a ruling on the Motion in the course of the full evidentiary hearing scheduled to commence September 22, 2003. During the hearing and after due deliberation, the Panel denied Ms. Madrigal's and Mr. Mosher's Motion for Summary Judgment.

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) Claimants Robin R. Madrigal's and James M. Mosher's claims are denied in their entirety.
- 2) Counter-Respondents Robin R. Madrigal and James M. Mosher are jointly and severally liable to and shall pay E*TRADE Securities, Inc. the sum of \$263.41.
- 3) Counter-Respondents Robin R. Madrigal and James M. Mosher are jointly and severally liable to and shall pay E*TRADE Securities, Inc. interest at the rate of 5% on \$263.41, from the date of close of their account at E*TRADE Securities, Inc. to date of service of this award.
- 4) This Award shall bear interest at the rate of 10% per annum on any balance that remains unpaid thirty (30) days after receipt hereof, unless a motion to vacate has been filed with a court of competent jurisdiction. If this award is the subject of a motion to vacate that is subsequently denied, this award shall bear interest at the rate of 10% per annum on any balance that remains unpaid from date of the court's order denying said motion to vacate.
- 5) 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	= \$ 300.00
Respondent's Counterclaim	= \$ 200.00

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	= \$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

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 or the parties and the Panel. The following fees are assessed:

Four (4) Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session = \$ 1,800.00

Pre-hearing conferences:	May 21, 2003	1 session
	June 23, 2003	1 session
	August 7, 2003	1 session
	August 27, 2003	1 session

Seven (7) Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 7,875.00

Pre-hearing conferences:	May 23, 2001	1 session
	August 24, 2001	1 session
	October 4, 2001	1 session
	January 8, 2003	1 session
	March 17, 2003	1 session
	April 14, 2003	1 session
	June 10, 2003	1 session

Four (4) Hearing sessions @ \$1,125.00/session	= \$ 4,500.00
Hearings: September 22, 2003 2 sessions	
September 23, 2003 2 sessions	
Total Forum Fees	= \$14,175.00

1. The Panel assessed \$11,340.00 of the forum fees jointly and severally to Claimants/Counter-Respondents Robin R. Madrigal and James M. Mosher.
2. The Panel assessed \$2,835.00 of the forum fees to Respondent/Counter-Claimant E*TRADE Securities, Inc.

Fee Summary

1. Claimants/Counter-Respondents James M. Mosher and Robin R. Madrigal are charged jointly and several with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$11,340.00</u>
Total Fees	= \$11,640.00
Less Filing Fee waived by Regional Director	= \$ (300.00)
<u>Less payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD Dispute Resolution	= \$11,340.00
2. Respondent/Counter-Claimant, E*TRADE Securities, Inc. is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 200.00
Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	<u>= \$ 2,835.00</u>
Total Fees	= \$ 7,635.00
<u>Less payments</u>	<u>= \$(4,600.00)</u>
Balance Due NASD Dispute Resolution	= \$ 3,035.00

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

David J. Berardo, Esq.
Richard J. Rosenthal
David Maurer, Esq.

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



David J. Berardo, Esq.
Chair, Public Arbitrator

10/09/03

Signature Date

Richard J. Rosenthal
Public Arbitrator

Signature Date

David Maurer, Esq.
Non-Public Arbitrator

Signature Date

10-14-03

Date of Service

NASD Dispute Resolution

Arbitration No. 00-04459

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ARBITRATION PANEL

David J. Berardo, Esq.

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Public Arbitrator, Presiding Chair

Richard J. Rosenthal

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Public Arbitrator

David Maurer, Esq.

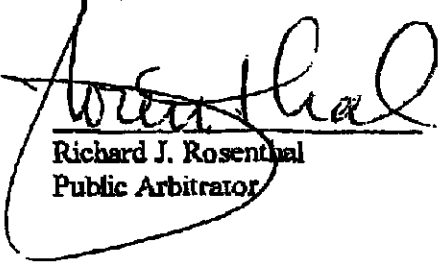
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Non-Public Arbitrator

Concurring Arbitrators' Signatures

David J. Berardo, Esq.
Chair, Public Arbitrator

Signature Date



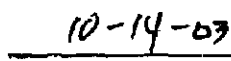
Richard J. Rosenthal
Public Arbitrator



Signature Date

David Maurer, Esq.
Non-Public Arbitrator

Signature Date



Date of Service

ARBITRATION PANEL

David J. Berardo, Esq.
Richard J. Rosenthal
David Maurer, Esq.

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

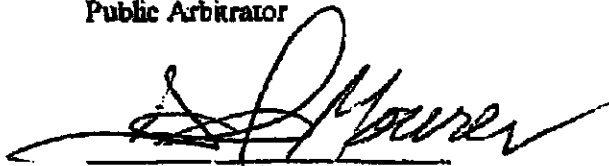
Concurring Arbitrators' Signatures

David J. Berardo, Esq.
Chair, Public Arbitrator

Signature Date

Richard J. Rosenthal
Public Arbitrator

Signature Date



David Maurer, Esq.
Non-Public Arbitrator


Signature Date

10-14-03
Date of Service