

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Joseph Colombo, (Claimant) vs. Datek Online Brokerage Services, LLC and iClearing Corp.,
(Respondents)

Case Number: 00-04497

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Joseph Colombo, hereinafter referred to as "Claimant", appeared *pro se*.

Respondents, Datek Online Brokerage Services, LLC ("Datek") and iClearing Corp. ("iClearing"), hereinafter collectively referred to as "Respondents": G. Thomas Fleming, III, Esq., Jones, Bell, Abbott, Fleming & Fitzgerald L.L.P., Los Angeles, CA.

CASE INFORMATION

Statement of Claim filed on or about: October 10, 2000.

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

Joint Statement of Answer filed by Respondents on or about: November 13, 2000.

Datek signed the Uniform Submission Agreement: October 24, 2000.

iClearing signed the Uniform Submission Agreement: October 24, 2000.

CASE SUMMARY

Claimant asserted the following causes of action: improper debits made from Claimant's account; failure to disclose to Claimant that debits were made from his account; and wrongful liquidation of securities. Claimant's claim involved the stocks of Symbol Tech, Satyam Info., and Western Wireless.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: neither the Statement of Claim, nor any purported claim alleged therein, states facts sufficient to constitute a claim for relief against Respondents; Claimant failed to take reasonable steps to mitigate his alleged damages; Claimant was negligent in and about the conduct, events, and matter alleged in the Statement of Claim, and Claimant's carelessness and negligence proximately caused and contributed to his alleged damages; Claimant knowingly and voluntarily assumed the risk of the conduct, events, and matters alleged in the Statement of Claim, and any damages sustained by Claimant were the proximate result of the risks he assumed; Claimant is

estopped by his own conduct, acts, and omissions to recover on any claim that he might have against Respondents; Claimant came into this forum with unclean hands; Claimant has waived any claim he might have against Respondents; Claimant would be unjustly enriched if he recovered any of the sums claimed to be due under the Statement of Claim; Claimant's claims are barred by the applicable statutes of limitation; and Claimant's claims are barred by the doctrines of laches, ratification, estoppel, and waiver.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$1,709.32, punitive damages in the amount of \$5,000.00, and forum fees in the amount of \$325.00.

Respondents requested:

1. That Claimant take nothing by reason of his Statement of Claim, and that an Award be entered in favor of Respondents;
2. That Respondents be awarded their attorneys' fees and all costs incurred in these proceedings; and
3. Such other and further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearing in this matter, Respondents made a Motion to Dismiss which was denied by the Arbitrator.

During the hearing in this matter, Claimant withdrew his claims against Respondent iClearing.

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 firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, Datek Online Brokerage Services, LLC and iClearing Corp. are parties.

Datek Online Brokerage Services, LLC

Member surcharge = \$300.00

iClearing Corp.

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: March 28, 2001 1 session

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

Hearing Date: January 15, 2002 1 session

Total Forum Fees = \$500.00

The Arbitrator has assessed all of the forum fees against Claimant.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 75.00
<u>Forum Fees</u>	<u>= \$500.00</u>
Total Fees	= \$575.00
<u>Less payments</u>	<u>= \$325.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$250.00

2. Datek be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$300.00</u>
Total Fees	= \$300.00
<u>Less payments</u>	<u>= \$300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. iClearing be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$300.00</u>
Total Fees	= \$300.00
<u>Less payments</u>	<u>= \$300.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

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

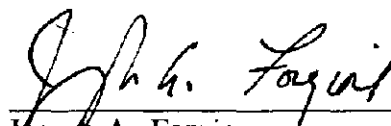
ARBITRATION PANEL

Joseph A. Forgione

Public Arbitrator

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.



Joseph A. Forgione
Public Arbitrator

2/6/02

Signature Date

February 12, 2002

Date of Service (For NASD office use only)