

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Luba Price, (Claimant) vs. Ameritrade, Inc. and Advanced Clearing, Inc., (Respondents)

Case Number: 00-04516

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Luba Price, hereinafter referred to as "Claimant": Jenice L. Malecki, Esq., The Law Office of Jenice L. Malecki, New York, NY.

Respondents, Ameritrade, Inc. ("Ameritrade") and Advanced Clearing, Inc. ("Advanced"), hereinafter collectively referred to as "Respondents": Patrick B. Griffin, Esq., Kutak Rock, LLP, Omaha, NE.

CASE INFORMATION

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

Claimant signed the Uniform Submission Agreement: September 28, 2000.

Statement of Answer filed by Ameritrade and Advanced on or about: December 13, 2000.

Ameritrade signed the Uniform Submission Agreement: November 21, 2000.

Advanced did not sign a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: violations of the federal securities laws; fraud; breach of fiduciary duty; failure to supervise; respondeat superior; negligence; breach of contract; misrepresentations; and margin violations. Claimant's claim involved the stocks of Dell Computer Corp., Doubleclick Inc., Beyond.com Corp., Cybersource Corp., and Phoenix Technologies Ltd.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's conclusory assertions of violations of federal securities laws fail to state any claim; Claimant makes no effort whatsoever to identify what, if any, misrepresentations Ameritrade is alleged to have made which violate the identified federal statutes; Claimant was advised of the terms governing her margin account, including maintenance requirements and Ameritrade's right to liquidate her account in the event of a margin deficiency; Claimant has failed to adequately plead the required element of scienter; as a discount broker, Ameritrade did not owe Claimant a

fiduciary duty; no private right of action exists for purported violations of NASD rules; the Statement of Claim fails basic pleading requirements, including setting forth facts showing the required element of proximate cause; and Claimant has completely failed to allege a failure to perform a specific act or acts required of Ameritrade.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$119,115.52, plus attorneys' fees, costs, filing fees, disbursements, and such other relief as the Panel deems appropriate.

Respondents requested that the Statement of Claim be dismissed, and that the costs of this proceeding be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

Advanced did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

During the hearings in this matter, Respondents made a motion to have Advanced dismissed as a Respondent. The Panel granted said motion. Respondents also made a motion to dismiss for lack of damages, which was denied by the Panel.

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 Panel 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 = \$ 300.00

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, Ameritrade, Inc. and Advanced Clearing, Inc. are parties.

Ameritrade, Inc.

Member surcharge = \$ 1,500.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$ 2,500.00

Advanced Clearing, Inc.

Member surcharge = \$ 1,500.00
Pre-hearing process fee = \$ 600.00
Hearing process fee = \$ 2,500.00

Adjournment Fees

Adjournments requested during these proceedings:

July 24, 25, 26 & 27, 2001, adjournment by Claimant = \$ 1,125.00

1. The Panel has assessed \$562.50 of the adjournment fee against Claimant.
2. The Panel has assessed \$562.50 of the adjournment fee against Ameritrade.

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 900.00

Pre-hearing conferences: July 3, 2001 1 session
July 18, 2001 1 session

One (1) Pre-hearing session with Panel x \$1,125.00 = \$ 1,125.00
Pre-hearing conference: April 30, 2001 1 session

Eight (8) Hearing sessions x \$1,125.00 = \$ 9,000.00

Hearing Dates: September 10, 2001 2 sessions
November 5, 2001 2 sessions
November 6, 2001 2 sessions
November 7, 2001 2 sessions

Total Forum Fees = \$11,025.00

1. The Panel has assessed \$5,512.50 of the forum fees against Claimant.
2. The Panel has assessed \$5,512.50 of the forum fees against Ameritrade.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

1. Claimant, requested tapes, \$60.00.
2. Ameritrade, requested tapes, \$120.00.

Fee Summary

1. Claimant be and hereby is solely liable for:

| | |
|---|---------------|
| Initial Filing Fee | = \$ 300.00 |
| Adjournment Fee | = \$ 562.50 |
| Forum Fees | = \$ 5,512.50 |
| <u>Administrative Costs</u> | = \$ 60.00 |
| Total Fees | = \$ 6,435.00 |
| <u>Less payments</u> | = \$ 1,485.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 4,950.00 |

2. Ameritrade be and hereby is solely liable for:

| | |
|---|----------------------|
| Member Fees | = \$ 4,600.00 |
| Adjournment Fee | = \$ 562.50 |
| Forum Fees | = \$ 5,512.50 |
| <u>Administrative Costs</u> | <u>= \$ 120.00</u> |
| Total Fees | = \$10,795.00 |
| <u>Less payments</u> | <u>= \$ 4,600.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 6,195.00 |

3. Advanced be and hereby is solely liable for:

| | |
|---|----------------------|
| <u>Member Fees</u> | <u>= \$ 4,600.00</u> |
| Total Fees | = \$ 4,600.00 |
| <u>Less payments</u> | <u>= \$ 4,600.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 0.00 |

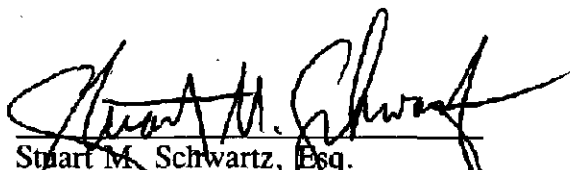
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

| | | |
|--------------------------|---|------------------------------------|
| Stuart M. Schwartz, Esq. | - | Public Arbitrator, Presiding Chair |
| Krishna M. Vempaty, Esq. | - | Public Arbitrator |
| Harry Aronsohn | - | Industry Arbitrator |

Concurring Arbitrators' Signatures

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.


Stuart M. Schwartz, Esq.
Public Arbitrator, Presiding Chair

11-21-01
Signature Date

Krishna M. Vempaty, Esq.
Public Arbitrator

Signature Date

Harry Aronsohn
Industry Arbitrator

Signature Date

December 4, 2001

Date of Service (For NASD office use only)

ARBITRATION PANEL

| | | |
|--------------------------|---|------------------------------------|
| Stuart M. Schwartz, Esq. | - | Public Arbitrator, Presiding Chair |
| Krishna M. Vempaty, Esq. | - | Public Arbitrator |
| Harry Aronsohn | - | Industry Arbitrator |

Concurring Arbitrators' Signatures

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Stuart M. Schwartz, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Krishna M. Vempaty
Krishna M. Vempaty, Esq.
Public Arbitrator

Nov 20, 2001
Signature Date

Harry Aronsohn
Industry Arbitrator

Signature Date

December 4, 2001

Date of Service (For NASD office use only)

ARBITRATION PANEL

| | | |
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| Stuart M. Schwartz, Esq. | - | Public Arbitrator, Presiding Chair |
| Krishna M. Vempaty, Esq. | - | Public Arbitrator |
| Harry Aronsohn | - | Industry Arbitrator |

Concurring Arbitrators' Signatures

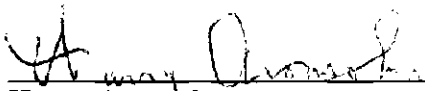
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

Stuart M. Schwartz, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Krishna M. Vempaty, Esq.
Public Arbitrator

Signature Date


Harry Aronsohn
Industry Arbitrator

11/27/2001
Signature Date

December 4, 2001
Date of Service (For NASD office use only)