

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Joan E. Patrick, Claimant v. E\*Trade Securities, Inc., Respondent

Case Number: 00-05215

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

For Claimant:

Michael H. Bonner, Esq.  
San Francisco, California

For Respondent:

Ekwan E. Rhow, Esq.  
Bird, Marella, Boxer & Wolpert  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed on or about: November 16, 2000

Claimant's Hearing Brief filed on or about: August 8, 2001

Claimant's Uniform Submission Agreement signed: November 10, 2000

Respondent's Statement of Answer filed on or about: January 18, 2001

Respondent's Arbitration Brief filed on or about: August 6, 2001

Respondent's Uniform Submission Agreement signed: January 19, 2001

**CASE SUMMARY**

Claimant alleged that she suffered damages because Respondent improperly failed to execute Claimant's order to sell 5,000 shares of Pinnacle common stock.

Respondent E\*Trade Securities, Inc. ("E\*TRADE") asserted that Claimant alleges that E\*TRADE is liable for a \$71,850 loss she incurred because E\*TRADE cancelled an order she placed to sell certain options. Respondent alleged that although it is true that E\*TRADE mistakenly cancelled Claimant's order (based on erroneous information concerning a blackout period), E\*TRADE later gave Claimant an opportunity to reinstate her order. Respondent further alleged that Claimant failed to reinstate the order as it had previously been placed and instead

placed several new limit orders for amounts that were higher than the selling price of the stock and, as such, Claimant's subsequent orders never filled. Respondent further alleged that Claimant now seeks to blame E\*TRADE for the losses stemming from her failure to sell her options prior to their expiration. Respondent further alleged that it was Claimant's own actions after the issues were resolved concerning the blackout period -- not E\*TRADE's -- that caused her options to expire without being sold. Respondent further alleged that had Claimant placed a market order or a limit order that was consistent with the market prices for the stock, she would have been able to gain a profit, or at least mitigate any losses she allegedly incurred. Respondent further alleged that although E\*TRADE regrets that Claimant suffered losses in connection with the expiration of her options, Claimant's attempt to shift that loss to E\*TRADE is completely unfounded and further alleged that E\*TRADE cannot be held liable for Claimant's own bad investment decisions.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$71,850.00 plus interest at the legal rate of 10% from June 20, 2000 to the date of the award.

Respondent requested that the Panel reject Claimant's claims in their entirety.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

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. The Panel found that Claimant had a duty to mitigate damages. The Panel believes Claimant's action of raising the price twice was not an act of mitigation. Accordingly, all claims by Claimant are dismissed.
2. All other relief not expressly granted is denied.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution, Inc. ("NASD-DR") received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$225.00

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) that gave rise to the dispute, claim or controversy. In this matter, the member firm, E\*TRADE, is a party and the following fees are assessed:

Member Surcharge	= \$1,000.00
Pre-Hearing Process Fee	= \$600.00
<u>Hearing Process Fee</u>	<u>= \$1,500.00</u>
Total Member Fees	= \$3,100.00

**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/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$750.00
Pre-hearing conference(s): July 5, 2001	1 session

(1) Hearing session @ \$750.00/session	= \$750.00
Hearing(s): August 15, 2001	1 session

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Total Forum Fees	= \$1,500.00
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1. The Panel assessed \$750.00 of the forum fees to Claimant.
2. The Panel assessed \$750.00 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.

The parties did not incur administrative costs.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 750.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 975.00
<u>Less Payments</u>	= \$(975.00)
Balance Due NASD-DR	= \$ 0.00

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 3,100.00
Forum Fees	= \$ 750.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$ 3,850.00
<u>Less Payments</u>	= \$(1,000.00)
Balance Due NASD-DR	= \$ 2,850.00

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.

**ARBITRATION PANEL**

Jane Bradley, Esq.  
Matthew V. Brady  
Robert A. Jette, Jr., Esq.

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Jane Bradley, Esq.  
Chair, Public Arbitrator

August 23, 2001  
Signature Date

Matthew V. Brady  
Public Arbitrator

Signature Date

Robert A. Jette, Jr., Esq.  
Non-Public Arbitrator

Signature Date

Date Served:  
AUG 29 2001

Date of Service

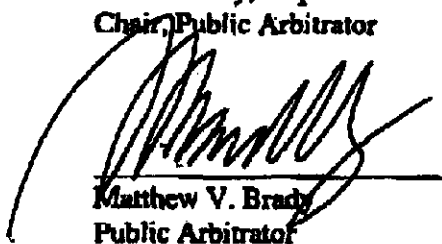
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Jane Bradley, Esq.	-	Public Arbitrator, Presiding Chair
Matthew V. Brady	-	Public Arbitrator
Robert A. Jette, Jr., Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Jane Bradley, Esq.  
Chair, Public Arbitrator



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Matthew V. Brady  
Public Arbitrator

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Signature Date

8/29/01

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Signature Date

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Robert A. Jette, Jr., Esq.  
Non-Public Arbitrator

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Signature Date

Date Served:

AUG 29 2001

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Date of Service

**ARBITRATION PANEL**

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Matthew V. Brady	-	Public Arbitrator
Robert A. Jette, Jr., Esq.	-	Non-Public Arbitrator

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Chair, Public Arbitrator

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Matthew V. Brady  
Public Arbitrator

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Signature Date

  
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Robert A. Jette, Jr., Esq.  
Non-Public Arbitrator

08-23-01  
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Signature Date

Date Served:

AUG 29 2001

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Date of Service