

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

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In the Matter of the Arbitration Between:

Ameritrade, Inc.

Claimant

v.

George C. Linkenback, II and Kimberly S. Linkenback

Respondent

Case Number: 01-00822

Hearing Site: Tampa, Florida

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**REPRESENTATION OF PARTIES**

For Ameritrade, Inc., hereinafter referred to as "Claimant": James J. Vihstadt, Regulatory Counsel, Claimant Ameritrade, Bellevue, Nebraska. On or about June 19, 2001, Patrick Griffin, Esq., Suzanne M. Shehan, Esq. and Julie M. Cornwell, Esq., Kutak Rock, LLP, Omaha, Nebraska, appeared as counsel for Claimant.

For George C. Linkenback and Kimberly S. Linkenback, hereinafter referred to as "Respondent": Michael Bowlus, Esq., Ford, Jeter, Bowlus, Duss & Morgan, P.A., Jacksonville, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 2, 2001.

Claimant's Uniform Submission Agreement signed on: February 2, 2001.

Statement of Answer and Counterclaim filed by Respondent on or about: April 18, 2001.

Respondent's Uniform Submission Agreement signed on: April 16, 2001.

Reply to Statement of Answer and Counterclaim filed by Claimant on or about: April 25, 2001.

**CASE SUMMARY**

Claimant alleged a cause of action to recover a debit balance relating to Respondent's investments in shares of Napro Biotherapeutics, Inc. on margin.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted that Claimant untimely liquidated the investments at issue and failed to provide Respondent with adequate time to obtain monies to offset the margin balance.

Respondent alleged the following causes of action in the Counterclaim: 1) Claimant failed to monitor Respondent's unusual trading and allowed over-margins; 2) breach of fiduciary duty; 3) breach of duty of suitability; and 4) negligence.

Claimant denied the allegations of wrongdoing set forth in the Respondent's Counterclaim and asserted the following defenses: 1) Claimant has the right to liquidate securities when an account becomes undercollateralized; 2) Claimant informed Respondent that it would take action to liquidate securities in Respondent's account, when and if necessary; and 3) Claimant acted within its contractual and legal authority in liquidating securities in Respondent's account.

#### **RELIEF REQUESTED**

Claimant initially requested: 1) compensatory damages in the amount of \$129,352.62; 2) interest; 3) costs; 4) attorneys' fees; and 5) such other relief the undersigned arbitrators (the "Panel") deemed just and proper. At the evidentiary hearing, Claimant requested: 1) compensatory damages in the amount of \$132,336.00; 2) costs; and 3) attorneys' fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

Respondent initially requested in the Counterclaim: 1) indemnification; 2) compensatory damages in the amount of \$67,000.00; 2) interest; 3) costs; and 4) attorneys' fees. At the evidentiary hearing, Respondent requested: 1) compensatory damages in the amount of \$66,500.00; 2) interest at the rate of 11% per annum from April 19, 2000; 3) costs; and 4) attorneys' fees.

Claimant did not delineate a specific relief in its Reply to Statement of Answer and Counterclaim.

#### **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, and the post-hearing submissions (if any), the Panel decided in full and final resolution of the issues submitted

for determination as follows:

1. Claimant's claims are denied in their entirety
2. Respondent's claims are denied in their entirety.
3. All other relief, including requests for attorneys' fees, are denied in their entirety.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$1,000.00
Respondent's counterclaim	= \$ 300.00

#### **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 which gave rise to the dispute, claim, or controversy. Accordingly, the member firm, Ameritrade, is a party:

Member Surcharge	= \$1,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$2,500.00
Total Member Fees	= \$4,600.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

The Panel denied Respondent's request to adjourn the evidentiary hearing scheduled for January 16-18, 2002.

#### **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:

One (1) Pre-hearing conference with a single arbitrator @ \$450.00 per session	= \$ 450.00
Pre-hearing conference: September 14, 2001 1 session	

Four (4) Pre-hearing conferences with the Panel @ \$1,125.00 per session = \$4,500.00

Pre-hearing conferences:      July 10, 2001              1 session  
    October 24, 2001          1 session  
    December 13, 2001      1 session  
    January 14, 2002        1 session

Three (3) Hearing sessions @ \$1,125.00 per session = \$3,375.00

Hearings:                              January 16, 2002          2 sessions  
    January 17, 2002          1 session

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Total Forum Fees = \$8,325.00

The Panel assessed \$4,162.50 of the forum fees to Claimant.

The Panel assessed \$4,162.50 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 sundry other requests.

There were no administrative costs incurred during these proceedings.

### Fee Summary

Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
Forum Fees	= \$4,162.50
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Total Fees	= \$9,762.50
<u>Less payments</u>	<u>= \$6,725.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,037.50

Respondent is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 300.00
Forum Fees	= \$4,162.50
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Total Fees	= \$4,462.50
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,037.50

NASD Dispute Resolution, Inc.

Arbitration No. 01-00822

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

**ARBITRATION PANEL**

Ronald W. Devoe	-	Public Arbitrator, Presiding Chair
Robert Schwartz	-	Non-Public Arbitrator
Lester M. Rosenberg	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
\_\_\_\_\_  
Ronald W. Devoe  
Chair, Public Arbitrator

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

/s/  
\_\_\_\_\_  
Robert Schwartz  
Non-Public Arbitrator

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

/s/  
\_\_\_\_\_  
Lester M. Rosenberg  
Public Arbitrator

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

February 5, 2002  
\_\_\_\_\_  
Date of Service

NASD Dispute Resolution, Inc.

Arbitration No. 01-00822

Award Page 5 of 5

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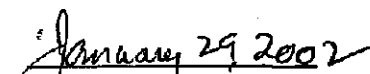
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**Concurring Arbitrators' Signatures**



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Chair, Public Arbitrator

  
Signature Date

\_\_\_\_\_  
Robert Schwartz  
Non-Public Arbitrator

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

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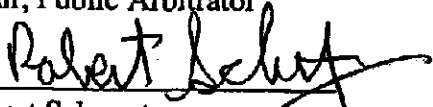
Non-Public Arbitrator

Public Arbitrator

Concurring Arbitrators' Signatures

Ronald W. Devoe

Chair, Public Arbitrator



Robert Schwartz

Non-Public Arbitrator

Lester M. Rosenberg

Public Arbitrator

Signature Date

2/2/02

Signature Date

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NASD Dispute Resolution, Inc.

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Robert Schwartz

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Public Arbitrator, Presiding Chair

Non-Public Arbitrator

Public Arbitrator

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Robert Schwartz

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Signature Date

  
Lester M. Rosenberg

Public Arbitrator

01/29/02

Signature Date

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Date of Service