

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Raymond J. Flynn, (Claimant) vs. E*Trade Securities Inc., (Respondent)

Case Number: 01-00854

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimant, Raymond J. Flynn, hereinafter referred to as "Claimant", appeared *pro se*.

Respondent, E*Trade Securities Inc., hereinafter referred to as "Respondent": Paul L. Kattas, Esq., Kelley Drye & Warren LLP, Parsippany, NJ.

CASE INFORMATION

Statement of Claim filed on or about: February 19, 2001.

Claimant signed the Uniform Submission Agreement: February 18, 2001.

Statement of Answer filed by Respondent on or about: April 26, 2001.

Respondent signed the Uniform Submission Agreement: May 15, 2001.

CASE SUMMARY

Claimant asserted the following cause of action: failure to execute limit order to buy Fruit of the Loom ("FTL") stock.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: because Claimant's order was an all-or-nothing trade it did not have priority on the market maker's books and, thus, there was no guarantee of execution; the market maker for FTL sent Respondent a notice cancelling all orders in FTL, because FTL filed for Chapter 11 bankruptcy; Respondent had no control over the decision by the market maker to cancel all orders in FTL; Respondent immediately notified Claimant of the order cancellation and Claimant's right to resubmit his order; Claimant failed to mitigate his damages; Claimant is not entitled to punitive damages as a matter of law; and Respondent performed according to its agreement with Claimant and in accordance with all applicable standards and rules.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$4,000.00, and punitive damages in the amount of \$1,000.00.

Respondent requested that:

- a. Claimant's Statement of Claim be dismissed in its entirety;
- b. Respondent be awarded its costs of this proceeding, including all forum fees and attorneys' fees; and
- c. Respondent be awarded such other and further relief as the Panel may deem appropriate.

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 = \$ 50.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, E*Trade Securities Inc. is a party.

Member surcharge = \$200.00

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 \$125.00	= \$125.00
Pre-hearing conference: August 1, 2001 1 session	
Two (2) Hearing sessions x \$125.00	= \$250.00
Hearing Date: November 30, 2001 2 sessions	
Total Forum Fees	= \$375.00

1. The Arbitrator has assessed \$187.50 of the forum fees against Claimant.
2. The Arbitrator has assessed \$187.50 of the forum fees against Respondent.

Fee Summary

1. Claimant be and hereby is solely liable for:	
Initial Filing Fee	= \$ 50.00
Forum Fees	= \$187.50
Total Fees	= \$237.50
Less payments	= \$175.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 62.50
2. Respondent be and hereby is solely liable for:	
Member Fees	= \$200.00
Forum Fees	= \$187.50
Total Fees	= \$387.50
Less payments	= \$200.00
Balance Due NASD Dispute Resolution, Inc.	= \$187.50

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


ARBITRATION PANEL

Joseph F. Wagner, Esq.

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 F. Wagner, Esq.
Public Arbitrator

12/19/01
Signature Date

December 31, 2001
Date of Service (For NASD office use only)