

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Gene W. Tobin

and

01-01650
Dallas, Texas

Name of Respondent

Ameritrade, Inc.

REPRESENTATION OF PARTIES

Gene W. Tobin ("Claimant") represented himself.

Ameritrade, Inc. ("Respondent") was represented by James Vihstadt, Esq. of Ameritrade located in Bellevue, Nebraska.

CASE INFORMATION

The Statement of Claim was filed on or about April 3, 2001. Submission Agreement of Claimant was signed on March 23, 2001.

Statement of Answer was filed by Respondent Ameritrade, Inc. on or about May 9, 2001. Submission Agreement of Respondent Ameritrade, Inc. was signed on April 30, 2001.

CASE SUMMARY

Claimant alleged that Respondent made misrepresentations and violated the terms of their margin agreement. He alleged causes of action including negligence, breach of fiduciary duty, breach of contract and misrepresentation.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that all margin calls were proper and in compliance with all contractual provisions in the margin agreement. Respondent asserted affirmative defenses including failure to state a claim upon which relief can be granted.

RELIEF REQUESTED

Claimant requested an award in the amount of \$21,144.10 in compensatory damages, \$2,855.10 in punitive damages and all other costs as deemed proper by the arbitrator.

Respondent requested that the claims asserted against it be denied in their entirety and that Respondent be awarded its costs and attorney's fees.

OTHER ISSUES CONSIDERED & DECIDED

This matter was originally set for hearing on September 13, 2001. In light of the World Trade Center bombing and the resulting travel problems, the parties and arbitrator agreed to move the hearing to November 9, 2001.

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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- (1). The terms and conditions of the Margin Agreement gave Respondents the authority and discretion to liquidate the securities in the account under the circumstances in this case, for the protection of both parties. Consequently, the Arbitrator finds in favor of the Respondent and awards no damages to the Claimant.
- (2). Notwithstanding the legal authority and discretion to liquidate, the Arbitrator finds that the Respondent, in a telephonic exchange, made specific representations that the Claimant would have additional time in which to cover the margin call. Even though this does not abrogate the Respondent's legal right to liquidate without further notice and at any time, the Claimant was misinformed and this arbitration would not have ensued if the communication had been clear. Consequently, the Arbitrator assesses the cost of the Arbitration to Respondent.
- (2). That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

- (3.) Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 = \$125.00

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, the member firm is Ameritrade, Inc.

Member surcharge = \$400.00

Forum Fees and Assessments

The Arbitration Panel 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 single arbitrator x \$450.00 = \$450.00
Pre-hearing conference: July 24, 2001 1 session

Two (2) Hearing sessions x \$450.00 (single arbitrator) = \$900.00
Hearing Date(s): November 9, 2001 1 session
Total Forum Fees; = \$1,350.00

The Arbitration Panel has assessed \$1,350.00 of the forum fees to Respondent Ameritrade, Inc.

Fee Summary

Claimant, Gene W. Tobin, shall be and hereby is liable for:

Initial Filing Fee = \$450.00

NASD Dispute Resolution, Inc.

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<u>Forum Fees</u>	= \$ 00.00
Total Fees	= \$450.00
<u>Less payments</u>	= \$.00
Refund Due Claimant from NASD Dispute Resolution, Inc.	= \$450.00

Respondent, Ameritrade, Inc. shall be and hereby is liable for:

Member Fees	= \$ 400.00
<u>Forum Fees</u>	= \$1,350.00
Total Fees	= \$1,750.00
<u>Less payments</u>	= \$1,000.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 750.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATOR

Jeff Abrams - Public, Sole Arbitrator

Concurring Arbitrators:

Jeff Abrams
Public Arbitrator, Presiding Chair

Signature Date

<u>Forum Fees</u>	= \$ 00.00
Total Fees	= \$450.00
<u>Less payments</u>	= \$ 00
Refund Due Claimant from NASD Dispute Resolution, Inc.	= \$450.00

Respondent, Ameritrade, Inc. shall be and hereby is liable for:

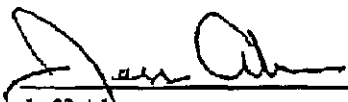
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Total Fees	= \$1,750.00
<u>Less payments</u>	= \$1,000.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 750.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATOR

Jeff Abrams - Public, Sole Arbitrator

Concurring Arbitrators:



Jeff Abrams
Public Arbitrator, Presiding Chair

12-6-2001
Signature Date