

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Byron B.W. Kim & Himana Kim, Claimants v. Ameritrade, Inc. and Thomas K. Lewis, Jr.,
Respondents

Ameritrade, Inc., Counter-Claimant v. Byron B.W. Kim & Himana Kim, Counter-Respondents

Case Number: 01-03096

Hearing Site: Honolulu, Hawaii

REPRESENTATION OF PARTIES

For Claimants Byron B.W. Kim & Himana Kim:

Byron B.W. Kim &
Himana Kim
In Pro Per
Honolulu, Hawaii

For Respondent Ameritrade, Inc.:

James J. Vihstadt
Ameritrade, Inc.
Bellevue, Nebraska

For Respondent Thomas K. Lewis, Jr.:

Thomas K. Lewis, Jr.
In Pro Per
Omaha, Nebraska

CASE INFORMATION

Statement of Claim filed: June 12, 2001

Amended Statement of Claim filed: November 6, 2001

Claimant/Counter-Respondents' (hereinafter Claimants) Reply to Answer to Statement of Claim
and Counterclaim filed: August 24, 2001

Claimants' Uniform Submission Agreement signed: May 28, 2001

Statement of Answer and Counterclaim filed by Respondent/Counter-Claimant (hereinafter
Respondent) Ameritrade, Inc.: August 13, 2001

Second Answer to Statement of Claim and Counterclaim filed by Respondent Ameritrade, Inc.:
December 28, 2001

Respondent Ameritrade, Inc.'s Uniform Submission Agreement signed: August 13, 2001

CASE SUMMARY

In their Amended Statement of Claim, Claimants alleged breach of fiduciary duty, fraud, breach of contract, misrepresentation, negligence, failure to supervise, "failure to mitigate damages, concealment, and malicious intent to exploit and abuse elders." Claimants also alleged violations of the following: "NASD's suitability rule, the NYSE's know your customer rule, NASD rules and interpretations prohibiting transactions beyond customer's means, antifraud provisions of the Hawaii Securities Laws, and Minimum Margin Maintenance Enforcement."

Respondent Ameritrade, Inc. denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

Respondent Thomas K. Lewis, Jr. did not file a Statement of Answer.

In their Counterclaim, Respondent Ameritrade, Inc. alleged failure to pay debit balance.

Claimants denied the allegations of wrongdoing set forth in Respondent Ameritrade, Inc.'s Counterclaim.

RELIEF REQUESTED

In their Amended Statement of Claim, Claimants requested \$76,998.00 in compensatory damages and \$23,002.00 in punitive damages.

Respondent Ameritrade, Inc. requested dismissal of the Claimants' Statement of Claim in its entirety.

In their Counterclaim, Respondent Ameritrade, Inc. requested actual damages of \$7,262,49, interest, and reimbursement for arbitration costs.

Claimants requested dismissal of Respondent Ameritrade, Inc.'s Counterclaim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On November 6, 2001, Claimant named J. Joe Ricketts in the Amended Statement of Claim. The undersigned Panel determined that J. Joe Ricketts was not properly served with the Amended Statement of Claim.

The undersigned Panel determined that Respondent Thomas K. Lewis, Jr. was not properly served with the Statement of Claim and did not receive due notice of the hearing.

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) Respondent Ameritrade, Inc. is liable to and shall pay Claimants \$28,000.00 in compensatory damages.
- 2) Respondent Ameritrade, Inc. is liable to and shall pay Claimants \$11,000.00 in punitive damages.
- 3) Respondent Ameritrade, Inc.'s Counterclaim is dismissed with prejudice.
- 4) Respondent Thomas K. Lewis, Jr. is dismissed without prejudice.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

FEEES

Pursuant to 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	= \$ 225.00
Respondent's Counterclaim filing fee	= \$ 500.00

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, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 1,500.00
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 a single arbitrator @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: March 15, 2002 1 session	
2 Pre-hearing conference sessions with the Panel @ \$ 750.00/session	= \$ 1,500.00
Pre-hearing conferences: January 22, 2002 1 session	
February 13, 2002 1 session	
5 Hearing sessions @ \$ 750.00/session	= \$ 3,750.00
Hearings: April 18, 2002 2 sessions	
April 19, 2002 2 sessions	
April 20, 2002 1 session	
Total Forum Fees	= \$ 5,700.00

1. The Panel assessed \$ 2,280.00 of the forum fees jointly and severally to Claimants Byron B.W. Kim & Himana Kim.
2. The Panel assessed \$ 3,420.00 of the forum fees to Respondent Ameritrade, Inc.

Fee Summary

1. Claimants Byron B.W. Kim & Himana Kim are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 2,280.00</u>
Total Fees	= \$ 2,505.00
Less filing fee waived by Director	= \$(225.00)
<u>Less payments</u>	<u>= \$(975.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,305.00

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

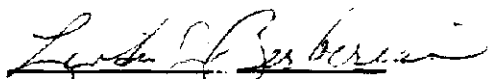
Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$ 3,100.00
<u>Forum Fees</u>	<u>= \$ 3,420.00</u>
Total Fees	= \$ 7,020.00
<u>Less payments</u>	<u>= \$(3,850.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,170.00

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

Linda J. Berberian, Esq.	-	Public Arbitrator, Presiding Chair
Tobin B. Swanson, Esq.	-	Public Arbitrator
Roberta Lee-Driessoll, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Linda J. Berberian, Esq.
Chair, Public Arbitrator



Signature Date

Tobin B. Swanson, Esq.
Public Arbitrator

Signature Date

Roberta Lee-Driessoll, CFP
Non-Public Arbitrator

Signature Date

Date of Service

Linda J. Berberian
Linda J. Berberian, Esq.

Date of Service (For NASD-DR office use only)

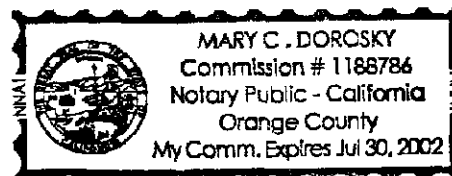
Hawaii Notary Block - Linda J. Berberian, Esq.

State of CALIFORNIA ss:

City and County of SANTA ANA, ORANGE County

On this 30th day of April, 2002 ^{YMC.D}, before me personally appeared Linda J. Berberian to me known and known before me to be the individual described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

Mary C. Dorosky
Notary Public, State of Hawaii California
My commission expires: 7/30/02



ARBITRATION PANEL

Linda J. Berberich, Esq.	-	Public Arbitrator, Presiding Chair
Tobin M. Swanson, Esq.	-	Public Arbitrator
Robert Lee Driscoll, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Linda J. Berberich, Esq.
Chair, Public Arbitrator

Signature Date


Tobin M. Swanson, Esq.
Public Arbitrator

4/30/02
Signature Date

Robert Lee Driscoll, CFP
Non-Public Arbitrator

Signature Date

Date of Service

ATTN: Jennine Schell
Kim v Ameritrade 01-03092

NASD Dispute Resolution, Inc.

Arbitration No. 01-01 96

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Tobin B. Swanson

Tobin B. Swanson, Esq.

Date of Service (for NASD-DR office use only)

Hawaii Notary Block - Tobin B. Swanson, Esq.

State of HAWAII as:

City and County of HONOLULU

On this 30th day of April 2002, before me personally appeared TOBIN B. SWANSON to me known and known before me to be the individual described in and who executed the foregoing instrument and he/she duly acknowledged that he/she executed the same.

Catherine L.C. Tungpalan

CATHERINE L.C. TUNGPALAN

Notary Public, State of Hawaii

My commission expires: 10/17/04

