

**Award
NASD**

In the Matter of the Arbitration Between:

Dietrich Steiner, Claimant v. E*TRADE Securities, Inc., Respondent

Case Number: 01-03217

Hearing Site: Boca Raton, Florida

REPRESENTATION OF PARTIES

For Dietrich Steiner, hereinafter referred to as "Claimant": Randall W. Henley, Esq. ("Henley"), Randall W. Henley P.A., West Palm Beach, Florida. On April 26, 2002, Henley withdrew as counsel. Claimant appeared pro se for the remainder of this arbitration proceeding. However, Lonnie K. Martens, Esq., Kelley & Warren, P.A., West Palm Beach, Florida, appeared on behalf of Claimant for a pre-hearing conference on July 2, 2002.

For E*TRADE Securities, Inc., ("E*TRADE") hereinafter referred to as "Respondent": Joseph E. Floren, Esq., Steefel Levitt & Weiss, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: June 28, 2001.

Claimant's Uniform Submission Agreement signed: May 29, 2001.

Statement of Answer filed by Respondent on or about: September 4, 2001.

Uniform Submission Agreement signed by Respondent: November 3, 2001.

CASE SUMMARY

Claimant alleged the following causes of action: 1) breach of contract; and 2) violation of §517.301 of Florida Statutes. The causes of action relate to investments in securities of Intermedia Communications, Inc. and VYYO.

Unless specifically admitted in its Statement of Answer, Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested in his Statement of Claim: 1) compensatory damages in the amount of \$118,500.00; 2) pre-award interest; 3) costs; 4) attorneys' fees; and 5) such other relief that the Panel deemed just and proper.

Respondent requested: 1) dismissal of Claimant's causes of action; 2) costs; 3) forum fees; and 4) such other relief that the Panel deemed just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

On or about March 25, 2002, Respondent filed a Motion to Compel. Claimant did not file a response. At the pre-hearing conference on April 8, 2002, the parties verbally agreed to resolve their discovery issues. As such, the Chair did not issue a separate order.

On or about April 16, 2002, Henley filed a Motion to Withdraw Representation and Continue the Hearing of April 30, 2002. On or about April 19, 2002, Respondent filed its response. On or about April 25, 2002, the Panel granted the Motion with the following conditions: a new pre-hearing conference shall be held to determine new hearing dates and the cost of the teleconference shall be borne wholly by Claimant; unresolved discovery issues shall be resolved at said teleconference; and the Panel reserves the right to levy sanctions for the Claimant's failure to comply with NASD disclosure rules and his agreement to resolve discovery issues at the April 8, 2002 pre-hearing conference.

On May 3, 2002, Claimant filed a Motion to Continue Discovery; on May 9, 2002 Claimant filed a Second Motion to Compel; and on May 16, 2002, Claimant filed a Motion to Amend Statement of Claim/Clarify Damages/Motion to Continue Pre-Hearing Conference. On or about May 31, 2002, Respondent filed a written opposition to all three of Claimant's motions. On June 5, 2002, Claimant filed a reply to Respondent's opposition.

On or about June 7, 2002, the Panel issued an order denying Claimant's Motion to Amend; granting Claimant's Motion to Continue Discovery until June 25, 2002; and deferring any unresolved issues pertaining to Claimant's Second Motion to Compel until the pre-hearing conference of July 2, 2002.

On June 14, 2002 and June 17, 2002, respectively, Claimant filed a Motion for Applicable Damages, and Motion to Compel and Order to Access ("Motion to Access"). On June 24, 2002, Claimant filed a supplement to the Motion to Access. On July 1, 2002, Respondent filed a response to both motions.

On or about July 6, 2002, the Panel denied Claimant's Motion for Applicable Damages.

On July 1, 2002, Lonnie K. Martens, Esq. ("Martens"), filed a Limited Notice of Appearance on behalf of Claimant solely for the July 2, 2002 pre-hearing conference. On July 3, 2002, Martens terminated her representation of Claimant.

On July 3, 2002 the Chairperson issued an order pursuant to the July 2, 2002 pre-hearing

conference whereby he requested that Claimant submit a brief on the relevancy of the discovery requests still pending from his Motion to Access.

On July 5, 2002, Claimant submitted his brief on the Motion to Access and filed a Motion to Continue the final hearing of July 17, 2002. On July 8, 2002, Respondent filed a brief in opposition to Claimant's Motion to Continue.

On or about July 12, 2002 the Panel issued an order denying the continuance and stating that Claimant's brief was non-responsive to the Chairperson's order because it consisted mostly of allegations and arguments without precise and specific identification of relevant and appropriate materials not yet provided. As such, the Panel decided that the Motion to Access should not be considered.

On or about July 15, 2002, the Chairperson submitted a supplement to the Panel's July 12, 2002 order within which he clarified the Panel's grounds for denying Claimant's Motion to Continue. The Chairperson acknowledged that the motion was denied because Claimant explicitly agreed not to request any further postponements as a condition precedent to rescheduling the final hearing of April 30, 2002.

On July 16, 2002, Claimant requested that the Panel reconsider their ruling on his Motion to Access. The Panel did not change its earlier ruling.

At the final hearing, Respondent requested that this arbitration proceeding be dismissed and submitted a brief for attorneys' fees. The Panel denied the Motion to Dismiss.

On July 22, 2002, Claimant filed post-hearing submissions for the Panel's review. On or about July 25, 2002, Respondent submitted its response. On or about July 30, 2002, the Panel issued an order stating that it would consider the submissions in an appropriate manner.

On or about August 6, 2002, Claimant filed a reply to Respondent's response to Claimant's post-hearing submissions. The Panel did not consider the reply since it already issued a ruling on the post-hearing submissions.

AWARD

After considering the pleadings, testimony, evidence presented at the hearing, and post-hearing submissions, the undersigned arbitrators (the "Panel") decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims against Respondent E*trade are dismissed.
- 2) Respondent's requests for attorneys' fees and costs are granted. Pursuant to Florida Statutes

§517.301, Claimant shall pay Respondent attorneys' fees of \$62,026.25, plus costs of \$4,443.26.

3) All other relief requested and not expressly granted is denied.

FEES

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

Filing Fees

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

Initial claim filing fee	= \$ 300.00
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The Panel denied Claimant's request to have the initial claim filing fee and hearing session deposit waived.

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 that gave rise to the dispute, claim, or controversy. E*TRADE Securities, Inc. is a party to this dispute and was an NASD member at the time the following fees were assessed:

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

Adjournment Fees

The following adjournment fees are assessed:

April 30, 2002, adjournment requested by Claimant	= \$ 1,125.00
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The Panel has assessed adjournment fee of \$1,125.00 to Claimant.

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:

Two (2) Pre-hearing conferences with the Chair @ \$450.00	= \$ 900.00
Pre-hearing conference: April 8, 2002	1 session
July 2, 2002	1 session

Two (2) Pre-hearing conferences with the Panel @ \$1,125.00	= \$	2,250.00
Pre-hearing conference: January 9, 2002	1 session	
June 4, 2002	1 session	
Six (6) Hearing sessions with the Panel @ \$1,125.00	= \$	6,750.00
Hearings: July 17, 2002	2 sessions	
July 18, 2002	3 sessions	
July 19, 2002	1 session	
Total Forum Fees	= \$	9,900.00

The Panel assessed the total forum fees of \$9,900.00 to Claimant.

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.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant is liable for the following fees and costs:

Initial Filing Fee	= \$	300.00
Adjournment Fee	= \$	1,125.00
Forum Fees	= \$	9,900.00
Total Fees	= \$	11,325.00
Less payments	= \$	0.00
Balance Due NASD	= \$	11,325.00

Respondent is liable for the following fees and costs:

Member Fees	= \$	4,600.00
Total Fees	= \$	4,600.00
Less payments	= \$	4,600.00
Balance Due NASD	= \$	0.00

All balances are payable to NASD and are due upon the parties' receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

<i>Arnold B. Galperin, Esq.</i>	-	<i>Public Presiding Chair</i>
<i>Howard I. Wilgoren, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Bernard L. Loring</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Arnold B. Galperin, Esq.
Chair, Public Arbitrator

Signature Date

/s/
Howard I. Wilgoren, Esq.
Public Arbitrator

Signature Date

/s/
Bernard L. Loring
Non-Public Arbitrator

Signature Date

August 13, 2002
Date of Service

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ARBITRATION PANEL

Arnold B. Galperin, Esq.

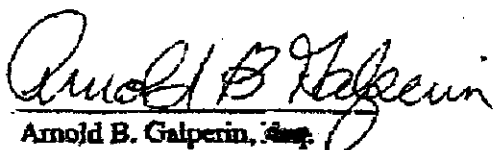
Howard I. Wilgoren, Esq.

Bernard L. Loring

Public Presiding Chair

Public Arbitrator

Non-Public Arbitrator

Concurring Arbitrators' Signatures
Arnold B. Galperin, Esq.
Chair, Public Arbitrator8-13-02
Signature DateHoward I. Wilgoren, Esq.
Public Arbitrator

Signature Date

Bernard L. Loring
Non-Public Arbitrator

Signature Date

Date of Service

NASD

Arbitration No. 01-3217

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ARBITRATION PANEL*Arnold B. Galperin, Esq.*

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*Public Presiding Chair**Howard I. Wilgoren, Esq.*

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*Public Arbitrator**Bernard L. Loring*

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*Non-Public Arbitrator***Concurring Arbitrators' Signatures**Arnold B. Galperin, Esq.

Chair, Public Arbitrator

Howard I. Wilgoren, Esq.

Public Arbitrator

Signature Date8-9-02Signature DateBernard L. Loring

Non-Public Arbitrator

Signature DateDate of Service

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Public Presiding Chair
Public Arbitrator
Non-Public Arbitrator

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Howard I. Wilgoren, Esq.
Public Arbitrator

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Signature Date

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