

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Steven G. Franks

and

02-05814
Phoenix, Arizona

Name of Respondent

Ameritrade, Inc. Successor-in-interest to Datek Online Financial Services, L.L.C.

REPRESENTATION OF PARTIES

Steven G. Franks ("**Claimant**") was represented by Garry N. Keister, Esq., Golston Keister & Steen, P.L.C., Tempe, Arizona.

Ameritrade, Inc. Successor-in-interest to Datek Online Financial Services, L.L.C. ("**Respondent**") was represented by James J. Vihstadt, Esq., Ameritrade, Bellevue Nebraska.

CASE INFORMATION

The Statement of Claim was filed on or about September 30, 2002. Submission Agreement of Claimant Steven G. Franks was signed on September 27, 2002.

Answer to Statement of Claim was filed by Respondent Ameritrade, Inc. Successor-in-interest to Datek Online Financial Services, L.L.C. on or about November 18, 2002. Submission Agreement of Respondent Ameritrade, Inc. Successor-in-interest to Datek Online Financial Services, L.L.C. was signed on October 9, 2002 by Gregory Fitzpatrick.

CASE SUMMARY

Claimant alleged that Respondent failed to execute orders that would have resulted in providing sufficient funds to cover a margin call. Specifically, Claimant alleged that he requested the sales of shares of Intel Corporation, Rambus, Inc., Terayon Communication Systems and JDS Uniphase Corporation. Claimant alleged that the failure to execute the requested trades constituted violations of federal and state securities laws, breach of fiduciary duty, negligence, and breach of contract.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated it should not be held liable for losses claimed by Claimant, which he either caused himself or could have avoided with reasonable care. In addition, Respondent stated that margin requirements

were communicated to Claimant when he opened his account with Datek. Respondent further stated that account held at the firm are self-directed and that Claimant was responsible for maintaining adequate security to cover his margin balance and secure positions. It was also stated by Respondent that it acted within its contractual and legal authority in liquidating securities in Claimant's account when it did, and was not required to sell stock in the account prior to the margin call's due date.

RELIEF REQUESTED

Claimant requested an award in the amount of \$11,848.00, attorneys' fees, interest and costs.

Respondent requested that the Statement of Claim be dismissed and that all costs be assessed to Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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 original(s) remain on file with the NASD Dispute Resolution (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:

Respondent Ameritrade, Inc. Successor-in-interest to Datek Online Financial Services, L.L.C. shall be and hereby is liable for and shall pay to Claimant Steven G. Franks the sum of \$4,818.00 (**Four Thousand Eight Hundred Eighteen Dollars and no Cents**).

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.

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 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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Ameritrade, Inc. Successor-in-interest to Datek Online Financial Services, L.L.C.

Member surcharge = \$425.00

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(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with a single arbitrator x \$450.00 = \$450.00

Pre-hearing conference(s): Date 1 session

One (1) Hearing session x \$450.00 = \$450.00

Hearing Date(s): July 8, 2003 1 session

Total Forum Fees = \$900.00

The Arbitrator has assessed \$450.00 of the forum fees to Steven G. Franks.

The Arbitrator has assessed \$450.00 of the forum fees to Ameritrade, Inc. Successor-in-interest to Datek Online Financial Services, L.L.C.

Fee Summary

Claimant, Steven G. Franks, shall be and hereby is liable for:

Initial Filing Fee = \$ 125.00

Forum Fees = \$ 450.00

Total Fees = \$ 575.00

Less payments = \$ 575.00

Balance Due NASD Dispute Resolution = \$ 0.00

Respondent, Ameritrade, Inc. Successor-in-interest to Datek Online Financial Services, L.L.C.,
shall be and hereby is liable for:

Member Fees	= \$ 425.00
<u>Forum Fees</u>	= \$ 450.00
Total Fees	= \$ 875.00
<u>Less payments</u>	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 450.00

All balances are due to NASD Dispute Resolution

ARBITRATOR

James D. Knotter, Esq. - Public Arbitrator, Presiding Chair

/s/ James D. Knotter
James D. Knotter, Esq.
Public Arbitrator, Presiding Chair

July 16, 2003
Signature Date

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Respondent, Ameritrade, Inc. Successor-in-interest to Datek Online Financial Services, L.L.C.,
shall be and hereby is liable for:

Member Fees	= \$ 425.00
<u>Forum Fees</u>	= \$ 450.00
Total Fees	= \$ 875.00
<u>Less payments</u>	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 450.00

All balances are due to NASD Dispute Resolution

ARBITRATOR

James D. Knotter, Esq. - Public Arbitrator, Presiding Chair



James D. Knotter, Esq.
Public Arbitrator, Presiding Chair

7/11/03

Signature Date