

Award
NASD Dispute Resolution

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In the Matter of the Arbitration Between:

Jeffrey Cieslak, Claimant / Counter-Respondent v. Datek Online Financial Services LLC,
Respondent / Counter-Claimant

REGISTRATION & DISCLOSURE

Case Number: 02-06266

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent:

H. Thomas Fehn, Esq.
Fields, Fehn & Sherwin
Los Angeles, California

For Respondent/Counter-Claimant:

Catherine L. Dellecker, Esq.
Jones Bell Abbott Fleming & Fitzgerald
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: October 14, 2002

Jeffrey Cieslak's Uniform Submission Agreement signed: undated

Statement of Answer and Counter-Claim filed by Ameritrade, successor in interest to Datek
Online Financial Services LLC: January 6, 2003

Datek Online Financial Services LLC's Uniform Submission Agreement signed:
November 5, 2002

CASE SUMMARY

Claimant/Counter-Respondent Jeffrey Cieslak alleged negligence, breach of contract, and misrepresentation, involving shares of Ponte Nossa.

Respondent/Counter-Claimant denied the allegations of wrongdoing set forth in Jeffrey Cieslak's Statement of Claim and filed a Counter-Claim alleging nonpayment of a debit balance.

RELIEF REQUESTED

Claimant/Counter-Respondent Jeffrey Cieslak requested \$70,000.00 in compensatory damages, and costs, including attorney's fees.

Respondent/Counter-Claimant requested dismissal of the Jeffrey Cieslak's Statement of Claim in its entirety, \$27,952.22 in unpaid debit balance, interest from August 31, 2001 to the date the Award is rendered, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing on February 23, 2004, Ameritrade's representative testified that it is the successor in interest to Datek Online Financial Services LLC.

On April 21, 2003, Claimant/Counter-Respondent Jeffrey Cieslak and his counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 15, 2003, Respondent/Counter-Claimant Datek Online Financial Services LLC's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 5, 2003, Respondent/Counter-Claimant Ameritrade, successor in interest to Datek Online Financial Services LLC's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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/Counter-Claimant Ameritrade, successor in interest to Datek Online Financial Services LLC, is liable to and shall pay Claimant/Counter-Respondent Jeffrey Cieslak the sum of \$2,500.00 in compensatory damages.
- 2) Respondent/Counter-Claimant Ameritrade, successor in interest to Datek Online Financial Services LLC's Counter-Claim is denied in its entirety.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 225.00
Ameritrade, successor in interest to Datek Online Financial Services LLC's Counter-Claim	= \$ 1,000.00

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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Datek Online Financial Services LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

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: September 24, 2003 1 session	
1 Pre-hearing conference session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: September 4, 2003 1 session	
2 Hearing sessions @ \$750.00/session	= \$ 1,500.00
Hearing: February 23, 2004 2 sessions	

Total Forum Fees	= \$ 2,700.00
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1. The Panel assessed \$ 1,350.00 of the forum fees to Claimant/Counter-Respondent Jeffrey Cieslak.
2. The Panel assessed \$ 1,350.00 of the forum fees to Respondent/Counter-Claimant Ameritrade, successor in interest to Datek Online Financial Services LLC.

Fee Summary

1. Claimant/Counter-Respondent Jeffrey Cieslak is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,350.00
Total Fees	= \$ 1,575.00
Less payments	= \$(975.00)
Balance Due NASD Dispute Resolution	= \$ 600.00
2. Respondent/Counter-Claimant Ameritrade, successor in interest to Datek Online Financial Services LLC is charged with the following fees and costs:

Counter-Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 3,550.00
Forum Fees	= \$ 1,350.00
Total Fees	= \$ 5,900.00
Less payments	= \$(3,300.00)
Balance Due NASD Dispute Resolution	= \$ 2,600.00

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

ARBITRATION PANEL

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Signature Date

Signature Date

Signature Date

Date of Service