

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

CASE: 02-06301

Emilio A. Aljure, claimant vs. Datek Online Financial Services, Chris Russell, and Michael McGrath, respondents.

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**ATTORNEYS:**

Claimant appeared pro se, Cali, S.A. Colombia.

For Respondents appeared Usman S. Mohammed, Esq. of the firm Jones Bell Abbott Fleming & Fitzgerald, Los Angeles, CA.

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**DATE FILED:** October 21, 2002

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**CASE SUMMARY:** Claimant alleged that respondents executed a market order when he placed a trailing order to sell shares of ORACLE. Claimant further alleged that respondents provided misleading information regarding their "streamer central tool". Claimant maintained that because of respondents' actions, his account suffered a loss.

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**ARBITRATOR'S REPORT:** See attached Exhibit A.

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**Claim Data**

Claim: \$2,500.00  
Filing Fees: \$75.00

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**Award Data**

Award: \$.00  
Filing Fees: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of claimant are dismissed in their entirety. 2) All other relief requests are denied. 3) The \$75.00 filing fee previously deposited with NASD Dispute Resolution by the claimant, shall be retained by NASD Dispute Resolution. 4) The arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondents Chris Russell's and Michael McGrath's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Chris Russell and Michael McGrath must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, respondent, Datek Online Financial Services has paid to NASD Dispute Resolution the \$150.00 Member Surcharge previously invoiced.

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Page Two  
Award 02-06301

Richard E. Conner, Esq.

Sole Public Arbitrator

AFFIRMATION

I, Richard E. Conner, Esq., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
Richard E. Conner, Esq.

FEBRUARY 15, 2003  
Signature Date

February 24, 2003  
Date of Service (For NASD-DR office use only)

**Findings of Fact**

1. *The first issue presented by the Statement of Claim, Answer, Affirmative Defenses and Exhibits is whether or not Claimant placed a "trailing order" or a "market order" on 9/16/02 to sell 5000 shares of Oracle(ORCL). As to the Oracle order the Claimant alleges he received "misleading information from the Datek web site and its employees thereby causing him the loss of \$1,000.00 and asks for fair compensation/damages to reimburse him. After the apparent discrepancy as to whether a trailing order or market order had been placed, the record reflects that the Claimant received an offer to cancel the order, rejected the opportunity, declined to do so and accepted an offer from Datek of 20 free transactions in satisfaction of his complaint. The value of the 20 free transactions does not appear in the record.*
2. *The second issue presented by the pleadings filed herein regards Claimant's order to buy 15 contracts of Microsoft October 50 on 9/18/02. It is conceded that same was intended to be and was handled as a "market order". The Claimant's allegation was that he received "misleading information" from "Steamer Tool". Query, is the Respondent Datek and/or its employees responsible for any monetary loss occasioned by the Claimant who has filed a claim in the amount of \$ 1,000.00 in regard to this portion of his claim.*
3. *The third issue is whether or not the claimant is entitled to an additional \$ 500.00 as stated the matter "has affected me in an economic sense as well as in my integrity". No documentary proof has been submitted to substantiate the claim.*

**Conclusions of Law**

4. *Based upon the foregoing, as to both orders, Oracle & Microsoft, the claimant's allegation that he received misleading market information from the Respondent's web site, to-wit: "Steamer Tool" is controlled by paragraph 24 of the Customer Agreement between the parties, signed by the Claimant on 5/16/00 and approved/accepted by the Respondent on 5/25/00. It is clear from the interpretation of the paragraph that Datek has no responsibility for any incorrect market data thereby transmitted. And therefore any claim for damages based upon that ground are denied.*
5. *As to the claim regarding the loss occasioned by the transaction, the record clearly reflects that claimant had the opportunity to reject the transaction, for the sale of the Oracle, but elected to receive the 20 free transaction in lieu of voiding the transaction and therefore the doctrine of accord and satisfaction is applied and the claimant's claim for damages in this regard is denied.*

6. As to the claim for some type of compensatory damage in the amount of \$ 500.00, it was unsupported by any documentary proof and any award by the Arbitrator would be pure speculation, therefore that claim is also denied.

The foregoing conclusions apply to all three Respondents, Datek Online Financial Services, LLC, Chris Russell and Michael McGrath.