

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 02-06972

Ryan and Jamie McCabe, claimants vs. E*Trade Securities, Inc., respondent.

ATTORNEYS:

Claimants appeared pro se, San Diego, CA.

For Respondent appeared in-house counsel John Bersin, Esq., Rancho Cordova, CA.

DATE FILED: November 18, 2002

CASE SUMMARY: Claimants alleged that respondent failed to properly transfer shares of ATCO into the appropriate accounts. Claimants maintained that because of respondent's actions, their account suffered a loss.

ARBITRATOR'S REPORT: See attached Exhibit A.

Claim Data

Claim: \$2,300.00
Interest: Unspecified
Attorney Fees: Unspecified
Filing Fees: Unspecified

Award Data

Award: \$.00
Interest: \$.00
Attorney Fees: \$.00
Filing Fees: \$37.50

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 requests for attorney fees are denied. 3) All requests for interest are denied. 4) All other relief requests are denied. 5) The \$75.00 filing fee previously deposited with NASD Dispute Resolution by the claimant, shall be retained by NASD Dispute Resolution. 6) Respondent is liable and shall pay claimant \$37.50 as reimbursement of one half of the filing fee.

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


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Award 02-06972

Gregory L. Abbott, Esq.

Sole Public Arbitrator

AFFIRMATION

I, Gregory L. Abbott, 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.



Gregory L. Abbott, Esq.

3/24/03

Signature Date

April 4, 2003

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

EXHIBIT A

IN ARBITRATION BEFORE

THE NATIONAL ASSOCIATION OF SECURITY DEALERS

RYAN AND JAMIE McCABE,
Claimants,

v.

E*TRADE SECURITIES, INC.
Respondent.

Case No. 02-06972

ARBITRATION FINDING AND
AWARD

After reviewing all documents submitted by both the Claimants and the Respondent herein, I find in favor of the Respondent and dismiss Claimants' claims with prejudice but without an award of costs, disbursements, or attorney's fees to either side. To the extent that there are mutual costs and fees, they shall be shared equally by the Claimants and the Respondent.


This case arises out of an attempt to transfer 300 shares of American Technologies, Inc. stock from Ryan McCabe's brokerage account at Harris Direct into an account for his wife, Jamie McCabe, at E*Trade Securities, Inc. (hereinafter "E*Trade"). E*Trade admits errors were made in the transfer and alleges some undefined amount of partial liability should attach to CFSB Direct and to DTC. Respondent nevertheless fails to make either CFSB Direct or DTC a party to this action; fails to allege any specific amount or percentage of liability for either party; and, most importantly, fails to support its allegations with any evidence - not even an Affidavit. I find the Claimants met their burden of proof and established E*Trade's liability herein.

Establishing Respondent's liability herein, however, is not enough - Claimants also have the burden of establishing that they sustained damages from Respondent's negligent acts - and this they fail to do. Claimants allege a loss of a dollar a share in special damages and an additional \$2,000.00 in some sort of vaguely defined general damages. They neglect, however, to introduce a scintilla of evidence to sustain any of their damage allegations - not even an

1 Affidavit from the Claimants themselves. The evidence introduced by the Respondent suggests
2 there was an \$0.80 share difference between the dates the stock was first attempted to be
3 transferred to Jamie McCabe's account (May 17, 2002) and when it apparently was finally so
4 transferred (October 17, 2002). But Claimants do not allege, let alone substantiate with proof,
5 that they would have sold the stock anytime during that time period or, if so, when. Nor do the
6 Claimants even allege, let alone prove, that they ever attempted to so dispose of the stock during
7 the relevant time frame but were unable to do so. Without such allegations and proof, this
8 arbitrator can only assume that even without any error by E*Trade, the Claimants would have
9 maintained their ownership throughout the time period and thus have suffered no special
10 damages as a result of E*Trade's transfer error. Neither did Claimants offer any proof of
11 suffering any general damages as a result of Respondent's error; Claimants simply failed to
12 introduce evidence of being damaged whatsoever.

13 I therefore find in favor of the Respondent and dismiss the Claimants' claims herein with
14 prejudice. Given, however, that Claimants established clear liability on the part of E*Trade, I
15 decline to award costs, disbursements, or attorney's fees to either party and therefore Order each
16 party to pay it's own costs and fees. To the extent there are shared costs or fees, they shall be
17 paid half and half by the Claimants, jointly and severally, and the Respondent.

18 I do note in Respondent's Answer the inclusion of allegations regarding Claimants
19 alleged ruse in attempting to establish multiple accounts to fraudulently obtain frequent flyer
20 mileage awards. These allegations have absolutely no relevance to whether Respondent made an
21 error in transferring stock to one of those accounts or whether Claimants were damaged by such
22 an error. They could only have been inserted into the Answer in an attempt to improperly
23 prejudice the fact-finder. Said allegations were ignored herein and the Respondent is cautioned
24 that such behavior is inappropriate and will not be tolerated.

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Gregory L. Abbott
Arbitrator, NASD