

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Gail Kalloch and Morgan Dean, Claimants v. optionsXpress Inc., Respondent

Case Number: 03-00587

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

For Claimants:

Gail Kalloch and Morgan Dean  
Berkeley, California

For Respondent:

Theodore E. Harman, Esq.  
Ungaretti & Harris  
Chicago, Illinois

**CASE INFORMATION**

Statement of Claim filed: January 22, 2003

Claimant Gail Kalloch's Uniform Submission Agreement signed: January 20, 2003

Statement of Answer filed by Respondent optionsXpress Inc. ("optionsXpress"): March 21, 2003

Respondent optionsXpress's Uniform Submission Agreement signed: March 21, 2003

**CASE SUMMARY**

Claimants alleged that they suffered damages because of Respondent's failure to timely execute orders with respect to investments in OEX options.

Respondent denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondent also asserted affirmative defenses.

**RELIEF REQUESTED**

Claimants' Claim requested actual damages in the amount of \$3,010.00, punitive damages in the amount of \$1,985.00 and costs.

At hearing, Claimants requested actual damages in the amount of \$2,490.00 and punitive damages in the amount of \$1,985.00.

Respondent requested dismissal of Claimants' claims and requested an award of fees and costs.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On or about June 9, 2003, Presiding Arbitrator, Paul J. Derenthal granted Respondent's motion to join Morgan Dean as a party in this matter.

Claimant Morgan Dean did not file with NASD Dispute Resolution ("NASD-DR") a properly executed submission to arbitration. The Panel determined that Ms. Dean is subject to NASD-DR jurisdiction pursuant to optionsXpress's Customer Agreement executed by Claimants on or about July 15, 2002. The Panel further determined that Ms. Dean is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and is bound by the determination of the Panel on all issues submitted.

On February 3, 2003, Claimants 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 March 21, 2003, Respondent'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.

Prior to the hearing, the parties were advised that Paul J. Derenthal's arbitrator classification was changed from public to non-public. The parties agreed that Mr. Derenthal shall remain as presiding arbitrator in this matter.

### **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) All claims by Claimants, including the claims for punitive damages, are dismissed.
- 2) Each party shall bear its own costs, including attorney's fees.
- 3) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 50.00
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#### **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. Accordingly, optionsXpress is a party and the following fees are assessed:

Member Surcharge	= \$200.00
Total Member Fees	= \$200.00

#### **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 @ \$125.00/session	= \$125.00
Pre-hearing conference: June 9, 2003	1 session

(2) Hearing sessions @ \$125.00/session	= \$250.00
Hearing: September 8, 2003	2 sessions

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Total Forum Fees	= \$375.00
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The Panel assessed \$187.50 of the forum fees to Claimants.

The Panel assessed \$187.50 of the forum fees to Respondent.

### **Fee Summary**

1. Claimants are charged with the following fees and costs:

Initial Filing Fee	= \$ 50.00
Forum Fees	= \$ 187.50
Total Fees	= \$ 237.50
Less Payments	= \$ (175.00)
Balance Due NASD-DR	= \$ 62.50

2. Respondent, optionsXpress, is charged with the following fees and costs:

Member Fees	= \$ 200.00
<u>Forum Fees</u>	<u>= \$ 187.50</u>
Total Fees	= \$ 387.50
<u>Less Payments</u>	<u>= \$ (200.00)</u>
Balance Due NASD-DR	= \$ 187.50

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

**ARBITRATION PANEL**

Paul J. Derenthal, Esq.

- Non-Public Arbitrator, Presiding Chair

**Presiding Arbitrator's Signature**

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Paul J. Derenthal, Esq.  
Chair, Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

9/29/03  
Date of Service

2. Respondent, optionsXpress, is charged with the following fees and costs:

Member Fees	= \$ 200.00
<u>Forum Fees</u>	<u>= \$ 187.50</u>
Total Fees	= \$ 387.50
<u>Less Payments</u>	<u>= \$ (200.00)</u>
Balance Due NASD-DR	= \$ 187.50

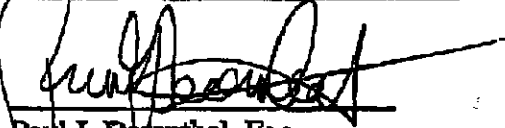
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**ARBITRATION PANEL**

Paul J. Derenthal, Esq.

Non-Public Arbitrator, Presiding Chair

Presiding Arbitrator's Signature



Paul J. Derenthal, Esq.  
Chair, Non-Public Arbitrator

9/26/03  
Signature Date

9/29/03  
Date of Service