

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

In the Matter of the Arbitration Between:

Name of the Claimant  
Chris T. Viertel

Case Number: 03-01618

Name of the Respondent  
E\*Trade Securities LLC

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Claimant Chris T. Viertel ("Viertel") appeared pro se.

For E\*Trade Securities LLC ("E\*Trade"), hereinafter referred to as "Respondent": John Bersin, Assistant General Counsel, E\*Trade Securities LLC, Rancho Cordova, California.

**CASE**

Statement of Claim filed on or about: N  
Claimant signed the Uniform Submission *Nx*  
Statement of Answer filed by Respondent *Contains all* 3 and April 4, 2003.  
Respondent signed the Uniform Submission *3 signatures* 103.  
Amended Statement of Claim filed on or about: \_\_\_\_\_  
Statement of Answer to Amended Statement of Claim filed on or about: October 10, 2003.  
Motion to Dismiss filed by Respondent on or about April 8, 2004.  
Objection to Motion to Dismiss filed by Claimant on or about: April 26, 2004.  
Reply to Objection to the Motion to Dismiss filed by Respondent on or about: April 27, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of contract; 2) negligence; 3) unauthorized trading; and 4) sell outs. The causes of action relate to the purchase and sale of unspecified option PUT Spreads on the SPX.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

**RELIEF REQUESTED**

Claimant requested compensatory damages of \$167,359.80, plus interest, punitive damages of \$502,079.40, attorney's fees, and the costs of this proceeding.

Respondent requested that all claims against it be dismissed, that the costs and expenses of this proceeding be assessed against Claimant and such other and further relief as is deemed just and proper.

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

Claimant did not appear at the evidentiary hearing in this proceeding. Upon review of the file and the representations made on behalf of the Respondent, the undersigned arbitrators (the "Panel") determined that Claimant received due notice of the hearing, and that arbitration of the matter would proceed without said Claimant present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

The Panel entered an Order denying, without prejudice, Respondent's ore tenus Motion for Default and Dismissal, and further assessing sanctions of \$15,000.00 against Claimant. The Order required that within five business days from receipt of the Order: 1) Claimant serve a response to outstanding discovery requests; and 2) Claimant forward to NASD Dispute Resolution an affidavit stating the grounds which would show a good faith reason why he failed to appear at the hearing. In addition, the Order stated that if Claimant failed to comply with the Order, the Panel would entertain a Motion to Dismiss from Respondent.

The Panel granted Respondent's Renewed Motion to Dismiss by Order dated June 21, 2004.

The party present have at the hearing agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Motion to Dismiss, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed, without prejudice.
2. Claimant is liable and shall pay to Respondent \$15,000.00 as sanctions for his failure to appear at the evidentiary hearing.
3. All monetary obligations of Claimant in this case shall be paid by him as a judgment entered by the Panel in this case, and such judgment shall survive and be enforceable after the dismissal without prejudice of Claimant's claims.
4. Any and all claims for relief not specifically addressed herein, including Claimant's claims for punitive damages and attorney's fees, are denied.

### **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 = \$375.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Respondent E\*Trade is a member firm and is a party.

Member surcharge = \$2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$4,000.00

### **Adjournment Fees**

No adjournments were granted during these proceedings for which fees were assessed.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during these proceedings.

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$1,200.00 = \$1,200.00

Pre-hearing conference: September 19, 2003 1 session

One (1) Hearing session @ \$1,200.00 = \$1,200.00

Hearing Date: February 17, 2004 1 session

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Total Forum Fees = \$2,400.00

The Panel has assessed the total forum fees of \$2,400.00 to Claimant.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$2,400.00
Total Fees	= \$2,775.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$1,350.00

Respondent is solely liable for:

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$1,800.00

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

**ARBITRATION PANEL**

<i>Martin A. Feigenbaum, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Don R. Harris</i>	-	<i>Public Arbitrator</i>
<i>Benham Fuhrman, CFP</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
/s/  
Martin A. Feigenbaum, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
/s/  
Don R. Harris  
Public Arbitrator

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

/s/  
Benham Fuhrman, CFP  
Non-Public Arbitrator

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

July 20, 2004  
Date of Service (For NASD Dispute Resolution office use only)

No administrative costs were incurred during these proceedings.

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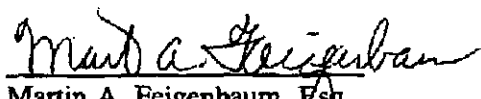
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Martin A. Feigenbaum, Esq.  
Public Arbitrator, Presiding Chairperson

7/20/04  
Signature Date

\_\_\_\_\_  
Don R. Harris  
Public Arbitrator

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

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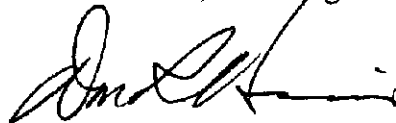
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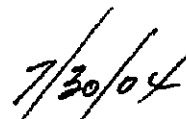
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Public Arbitrator, Presiding Chairperson



\_\_\_\_\_  
Don R. Harris  
Public Arbitrator

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



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

Arbitration No. 03-01618

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Benham Fuhrman, CFP

Non-Public Arbitrator



Signature Date

Date of Service (For NASD Dispute Resolution office use only)