

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

J. Greig, Claimant v. Tradestation Securities, Inc., Respondent

Case Number: 03-02012

Hearing Site: Seattle, Washington

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Linda M. Deola, Esq.
Reynolds, Motl and
Sherwood, PLLP
Helena, MT

For Respondent:

Felix G. Luna, Esq.
Heller Ehrman White &
McAuliffe LLP
Seattle, WA

Richard Jackson, Esq.
Stearns Weaver Miller
Weissler Alhadeff &
Sitterson, P.A.
Miami, FL

CASE INFORMATION

Statement of Claim filed: March 11, 2003

Claimant's Uniform Submission Agreement signed: March 10, 2003

Statement of Answer filed by Respondent Tradestation Securities, Inc.: May 30, 2003

Respondent Tradestation Securities, Inc.'s Uniform Submission Agreement signed: May 27, 2003.

CASE SUMMARY

Claimant alleged common law fraud, negligence, negligent misrepresentation, breach of contract, breach of implied duty of good faith and fair dealing, and violation of Washington Securities Act. Claimant's allegations involved transactions in shares of Apogee Tech, Inc. in Claimant's margin account.

Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested \$1,300,000.00 in compensatory damages, lost opportunity damages, return of NASD filing fees, assessment of additional hearing session fees against Respondent, removal of negative data regarding Claimant as posted by Respondent, which affects Claimant's ability to open an account with other NASD member firms, pre- and post-judgment interest, costs, and attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety, costs, and attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On May 29, 2003, Respondent filed a Motion to Transfer Venue to Boca Raton, Florida. The Panel denied the motion on September 25, 2003.

On February 27, 2004, Respondent filed a Motion for Leave to Amend Answer and Affirmative Defenses and to Assert Counterclaim pursuant to NASD Code of Arbitration Procedure Rule 10328(c). On May 25, 2004, a telephonic pre-hearing conference was held, which was attended by Claimant, Respondent, and the Panel. The Panel granted the motion on May 28, 2004. Respondent did not file an Amended Answer in this matter.

AWARD

After considering the pleadings, Respondent's Motion for Summary Judgment and the responses thereto, Respondent's Motion to Dismiss Action as Sanction for Failure to Comply with Order Compelling Discovery and the responses thereto, and oral argument on the motions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) On June 18, 2004, Respondent filed a Motion for Summary Judgment. On July 12, 2004, Respondent filed a Motion to Dismiss Action as Sanction for Failure to Comply with Order Compelling Discovery. On July 20, 2004, a telephonic pre-hearing conference was held regarding Respondent's Motion for Summary Judgment, which was attended by Claimant, Respondent, and the Panel. In an Order dated July 20, 2004, the Panel reserved its decision regarding Respondent's Motion for Summary Judgment until such time as oral argument would be heard on Respondent's Motion to Dismiss. On August 5, 2004, a telephonic pre-hearing conference was held on Respondent's Motion to Dismiss, which was attended by Claimant, Respondent, and the Panel.
 - a. After due deliberation, the Panel denies Respondent's Motion to Dismiss Action as Sanction for Failure to Comply with Discovery Order. However, the Panel

- finds that Claimant has failed to meet his discovery obligations.
- b. After due deliberation, the Panel grants Respondent's Motion for Summary Judgment and dismisses all claims with prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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	= \$ 500.00
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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 Tradestation Securities, Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,000.00
Total Member Fees	= \$8,550.00

Adjournment Fees

The following adjournment fees are assessed:

February 24, 2004, February 25, 2004, February 26, 2004, March 2, 2004, March 3, 2004, March 4, 2004, adjournment requested by J. Greig and Tradestation Securities, Inc.	= \$1,200.00
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The Panel assessed the adjournment fees to Claimant.

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 or the parties and the Panel. The following fees are assessed:

4 Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$4,800.00
Pre-hearing conferences: September 4, 2003 1 session	

	May 25, 2004	1 session	
	July 20, 2004	1 session	
	August 5, 2004	1 session	
Total Forum Fees			= \$4,800.00

1. The Panel assessed \$4,200.00 of the forum fees to Claimant J. Greig.
2. The Panel assessed \$600.00 of the forum fees to Respondent Tradestation Securities, Inc.

Fee Summary

1. Claimant J. Greig is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$ 4,200.00</u>
Total Fees	= \$ 5,900.00
<u>Less payments</u>	<u>=(2,300.00)</u>
Balance Due NASD Dispute Resolution	= \$ 3,600.00
2. Respondent Tradestation Securities, Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 9,150.00
<u>Less payments</u>	<u>=(8,550.00)</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

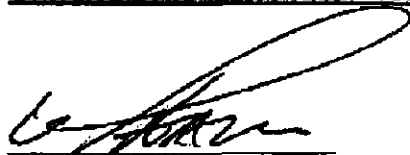
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

William L. Hawes, CPA
Ernest D. Greco, Esq.
William A. Miller

- **Public Arbitrator, Presiding Chair**
- **Public Arbitrator**
- **Non-Public Arbitrator**

Concurring Arbitrators' Signatures



William L. Hawes, CPA
Chair, Public Arbitrator

8/10/04

Signature Date

Ernest D. Greco, Esq.
Public Arbitrator

Signature Date

William Miller
Non-Public Arbitrator

Signature Date

8/11/04

Date of Service

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Chair, Public Arbitrator

Signature Date

Ernest D. Greco, Esq.
Public Arbitrator

Signature Date

William Miller
William Miller
Non-Public Arbitrator

Aug. 10, 04
Signature Date

8/11/04
Date of Service