

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Lillian Kouzmanoff

and

04-05332  
Chicago, Illinois

Name of Respondent

Ameritrade, Inc., Successor in Interest to Datek Online Financial  
Services, LLC

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Lillian Kouzmanoff ("Claimant") was represented by Tracy Pride Stoneman, Esq., Westcliffe, Colorado.

Ameritrade, Inc., Successor in Interest to Datek Online Financial Services, LLC ("Respondent") was represented by James J. Vihstadt, Esq., Ameritrade, Inc., Successor in Interest to Datek Online Financial Services, LLC, Bellevue, Nebraska.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 26, 2004. The Submission Agreement of Claimant was signed on or about July 27, 2004.

The Statement of Answer was filed by Respondent on or about October 21, 2004. The Submission Agreement of Respondent was signed on or about October 18, 2004.

Claimant and Respondent submitted post-hearing briefs, requested by the panel, on or about July 15, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: suitability; breach of fiduciary duty; and failure to supervise. The claims related to the Claimant's allegations that Respondent failed to properly open, administer, or supervise her Datek account.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated it did not provide trading advice or recommendations and did not make discretionary trades in Claimant's account.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$400,000.00
Interest	Unspecified
Attorney's Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel finds in favor of Respondent, therefore the claims asserted in this matter are denied in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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 = \$300.00

#### **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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Ameritrade, Inc., Successor in Interest to Datek Online Financial Services, LLC.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

1 Pre-hearing session with Panel	x	\$1,125.00	\$	1,125.00
December 22, 2004	1 session			
6 Hearing sessions	x	\$1,125.00	\$	6,750.00
June 27, 2005	2 sessions			
June 28, 2005	2 sessions			
June 29, 2005	2 sessions			
Total Forum Fees			\$	7,875.00

The Arbitration Panel has assessed \$3,937.50 of the forum fees to Lillian Kouzmanoff.

The Arbitration Panel has assessed \$3,937.50 of the forum fees to Ameritrade, Inc., Successor in Interest to Datek Online Financial Services, LLC.

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Arbitration No. 04-05332  
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**Fee Summary**

Claimant, Lillian Kouzmanoff, shall be and hereby is liable for:

Initial Filing Fee	= \$	300.00
<u>Forum Fees</u>	= \$	3,937.50
Total Fees	= \$	4,237.50
<u>Less payments</u>	= \$	1,425.00
Balance Due NASD Dispute Resolution	= \$	2,812.50

Respondent, Ameritrade, Inc., Successor in Interest to Datek Online Financial Services, LLC,  
shall be and hereby is liable for:

Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	3,937.50
Total Fees	= \$	9,137.50
<u>Less payments</u>	= \$	5,200.00
Balance Due NASD Dispute Resolution	= \$	3,937.50

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Nicolaus Bruns, Jr., Esq. - Public Arbitrator, Presiding Chair  
Missy D. Margolis - Public Arbitrator  
Daniel C. Kriser - Non-Public Arbitrator

Concurring Arbitrators:

Nicolaus Bruns, Jr.

Nicolaus Bruns, Jr., Esq.  
Public Arbitrator, Presiding Chair

8/4/05  
Signature Date

Missy D. Margolis  
Public Arbitrator

Signature Date

Daniel C. Kriser  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Signature Date

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Signature Date

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Concurring Arbitrators:

/s/ Nicolaus Bruns  
Nicolaus Bruns, Jr., Esq.  
Public Arbitrator, Presiding Chair

August 4, 2005  
Signature Date

/s/ Missy D. Margolis  
Missy D. Margolis  
Public Arbitrator

August 3, 2005  
Signature Date

/s/ Daniel C. Kriser  
Daniel C. Kriser  
Non-Public Arbitrator

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