

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Domenic Tricome

Case Number: 04-06729

Names of the Respondents

Online Brokerage Services, Inc.

Success Trade Securities, Inc.

Fuad Ahmed

Daniel M. Zaleski

Darren M. Menaker

Kevin Michael Overy

Christopher Scott Campbell

Margaret H. Ziegler

Hearing Site: Philadelphia, Pennsylvania

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Nature of the Dispute: Customer vs. Members and Associated Persons

**REPRESENTATION OF PARTIES**

Claimant represented himself in these proceedings.

Respondents, Online Brokerage Services, Inc. ("OBS"), Daniel M. Zaleski ("Zaleski"), Kevin Michael Overy ("Overy"), and Christopher Scott Campbell ("Campbell") were represented by Barbara A. Mallon, Esq., Mallon & Johnson, P.C., Chicago, Illinois.

Respondents, Success Trade Securities, Inc. ("Success Trade"), Fuad Ahmed ("Ahmed"), Darren M. Menaker ("Menaker"), and Margaret H. Ziegler ("Ziegler") were represented by William C. Saacke, Esq., McNulty & Saacke, Los Alamitos, California.

**CASE INFORMATION**

Statement of Claim filed on September 21, 2004.

Claimant signed the Uniform Submission Agreement on October 5, 2004.

Motion to Dismiss and Answer filed by Respondents OBS, Campbell, Overy, and Zaleski filed on November 18, 2004.

A representative of Respondent OBS executed the Uniform Submission Agreement on November 16, 2004.

Respondent Campbell signed the Uniform Submission Agreement on December 3, 2004.

Respondent Overy signed the Uniform Submission Agreement on December 3, 2004.

Respondent Zaleski signed the Uniform Submission Agreement on December 3, 2004.

Response to the Statement of claim and Motion to Dismiss filed by Respondents Success Trade, Ahmed, and Ziegler filed on November 23, 2004.

First Amended Response to the Statement of Claim and Motion to Dismiss filed by Respondents

Success Trade, Ahmed, Ziegler, and Menaker filed on January 11, 2005.

A representative of Respondent Success Trade executed the Uniform Submission Agreement on November 16, 2004.

Respondent Ahmed signed the Uniform Submission Agreement on January 13, 2005.

Respondent Ziegler signed the Uniform Submission Agreement on November 23, 2004.

Respondent Menaker signed the Uniform Submission Agreement on December 31, 2004.

Claimant filed a Response to the Motions to Dismiss on December 8, 2004.

Claimant filed a Response to Respondents' Success Trade, Ahmed, Ziegler and Menaker's First Amended Response to the Statement of Claim and Motion to Dismiss on April 11, 2005.

### **CASE SUMMARY**

Claimant, in his Statement of Claim asserted the following causes of action, among others: negligence and fraud. The causes of action relate to the use of SuccessTrader software, the purchase and sale of common stock, including DOL, WFC, and WO stock, and the use of a margin account.

Unless specifically admitted in their Answer, Respondents OBS, Campbell, Overy, and Zaleski denied the allegations made in the Statement of Claim.

Unless specifically admitted in their Response to the Statement of Claim and Amended Response to the Statement of Claim, Respondents Success Trade, Ahmed, Ziegler, and Menaker denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a cause of action; failure to mitigate damages; estoppel; waiver; statute of limitations; and Claimant's claim is barred by the express provisions of Respondent Success Trade's User Agreement.

### **RELIEF REQUESTED**

Claimant in his Statement of Claim requested:

Compensatory Damages	\$ 10,576.00
Punitive Damages	\$ 30,000.00
Interest	\$ 1,639.00
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified
Other Monetary Relief	amount unspecified

Respondents OBS, Campbell, Overy, and Zaleski requested that the Statement of Claim be dismissed in its entirety, and that they be awarded attorneys' fees and costs for defense of this proceeding.

Respondents Success Trade, Ahmed, Ziegler, and Menaker requested that Claimant take nothing by reason of his Statement of Claim, and that Respondents Success Trade, Ahmed, Ziegler and Menaker be awarded judgment for attorneys' fees and costs of suit incurred herein. Respondents

Ahmed, Ziegler and Menaker also requested that the Arbitration Panel (the "Panel") recommend that all references to this complaint and this arbitration proceeding be ordered expunged from their registration records maintained by the Central Registration Depository ("CRD").

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

On May 25, 2005, following a Pre-Hearing Conference Call to discuss Respondents' Motions to Dismiss and Claimant's Response thereto, the Panel granted Respondents' Motions to Dismiss and ordered this matter dismissed with prejudice.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents' Motions to Dismiss are granted;
2. Claimant's claims are dismissed with prejudice;
3. All claims for punitive damages and attorneys' fees are denied in their entirety;
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Ahmed, Zaleski, Menaker, Overy, Campbell, and Ziegler's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Ahmed, Zaleski, Menaker, Overy, Campbell, and Ziegler must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
5. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
6. Any and all relief not specifically addressed herein is denied in its entirety.

### **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 = \$ 175.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the



Respondent Success Trade is assessed and shall pay:

Member Fees	= \$ 2,625.00
Total Fees	= \$ 2,625.00
Less payments	= \$ 1,625.00
Balance Due NASD Dispute Resolution	= \$ 1,000.00

Respondents, OBS, Success Trade, Ahmed, Zaleski, Menaker, Overy, Campbell, and Ziegler are jointly and severally assessed and shall pay:

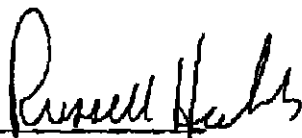
Forum Fees	= \$ 600.00
Total Fees	= \$ 600.00
Less payments	= \$ 00.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

**ARBITRATION PANEL**

Russell Stine Heckler, Esq.	-	Public Arbitrator, Presiding Chairperson
Jill Leeds-Rivera	-	Public Arbitrator, Panelist
James M. Waters	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**



Russell Stine Heckler, Esq.  
Public Arbitrator, Presiding Chairperson

5/27/05

Signature Date

Jill Leeds-Rivera  
Public Arbitrator, Panelist

Signature Date

James M. Waters  
Non-Public Arbitrator, Panelist

Signature Date

June 1, 2005

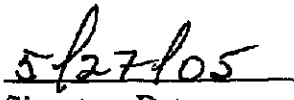
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

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Signature Date

  
Jill Leeds-Rivera  
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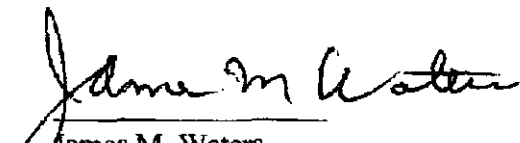
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