

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

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In the Matter of the Arbitration Between:

Paul J. Kelly (Claimant) v. Ameritrade, Inc. (Respondent)

Case Number: 04-07266

Hearing Site: Boston, Massachusetts

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Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant Paul J. Kelly hereinafter referred to as "Claimant": Timothy E. Zerillo, Esq., Zerillo Law Offices, LLC, Portland, ME. Previously appeared *pro se*.

Respondent Ameritrade, Inc. n/k/a J.P. Securities, Inc., hereinafter referred to as "Respondent": James J. Vihstadt, Esq., Ameritrade, Inc., Omaha, NE.

**CASE INFORMATION**

Statement of Claim filed on or about: October 12, 2004.

Claimant signed the Uniform Submission Agreement: October 21, 2004.

Statement of Answer filed by Respondent on or about: November 29, 2004.

Respondent signed the Uniform Submission Agreement: November 29, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, suitability, margin calls, failure to comply with Regulation T, Good Faith Regulations, and negligence. The causes of action relate to various securities, including WEL.

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

**RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 135,000.00
Punitive Damages	\$ 300,000.00
Attorneys' Fees	Unspecified

Costs

Unspecified

Respondent requested that the Statement of Claim be dismissed and that all costs be assessed against Claimant.

**OTHER ISSUES CONSIDERED AND 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.

**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. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$40,000.00.
2. Any and all relief not specifically addressed herein, including punitive damages, is 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 = \$ 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. Accordingly, Ameritrade is a party.

Member surcharge = \$ 1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 2,750.00

**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 Panel @ \$1,125.00 = \$ 1,125.00  
Pre-hearing conference: February 9, 2005 1 session

Two (2) Hearing sessions @ \$1,125.00 = \$ 2,250.00

Hearing Date: July 6, 2005 2 sessions

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Total Forum Fees = \$ 3,375.00

1. The Panel has assessed \$1,687.50 of the forum fees to Claimant.
2. The Panel has assessed \$1,687.50 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 1,987.50
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 562.50

2. Respondent is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 6,887.50
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 1,687.50

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

**ARBITRATION PANEL**

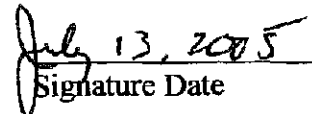
Richard M. McCostis, Esq.	-	Public Arbitrator, Presiding Chairperson
Debra M. Brown, Esq.	-	Public Arbitrator
Iris Taymore Schnitzer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Richard M. McCostis, Esq.  
Public Arbitrator, Presiding Chairperson

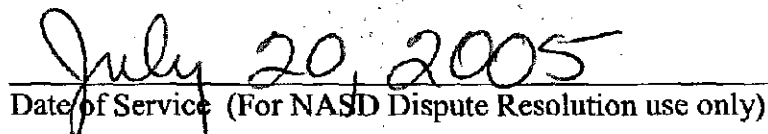
  
Signature Date

Debra M. Brown, Esq.  
Public Arbitrator

Signature Date

Iris Taymore Schnitzer  
Non-Public Arbitrator

Signature Date

  
Date of Service (For NASD Dispute Resolution use only)

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Iris Taymore Schnitzer	-	Non-Public Arbitrator

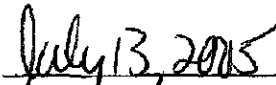
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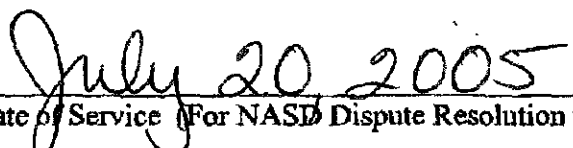
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