

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

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In the Matter of the Arbitration Between

Name of Claimants

Albert and Elsie Bertalmio

and

04-08366  
Chicago, Illinois

Name of Respondent

Ameritrade, Inc nka J.P. Securities Inc

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Albert and Elsie Bertalmio ("**Claimants**") were represented by Albert Bertalmio, Elmhurst, Illinois.

Ameritrade, Inc. nka J.P. Securities Inc. ("**Respondent**") was represented by John J. Vihstadt, Esq., Ameritrade, Inc nka J.P. Securities Inc., Bellevue, Nebraska.

**CASE INFORMATION**

The Statement of Claim was filed on or about December 9, 2004. Submission Agreement of Claimant Albert and Elsie Bertalmio was signed on December 6, 2004.

Statement of Answer was filed by Respondent Ameritrade, Inc. nka J.P. Securities Inc. on or about March 30, 2005. Submission Agreement of Respondent Ameritrade, Inc. nka J.P. Securities Inc. was signed on March 24, 2005.

**CASE SUMMARY**

Claimants alleged that shares of Daugherty Resources were sold without their approval or request.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated:

Ameritrade properly handled the Bertalmios orders to sell NGAS. Ameritrade should not now be held liable for damages claimed by the Bertalmios.

The Bertalmios did not protest any of the now-disputed transactions until well after their completion. Ameritrade updated the Account following each sell transaction placed by the Bertalmios, and notified them of the transactional details of each sale of stock through at least three different means: 1) the Ameritrade internet trading site displayed the details of each trade placed and executed, and listed the Account's holdings; 2) following each transaction, confirmation notices were sent to the Bertalmios; 3) at the end of each monthly period, monthly statements were sent to the Bertalmios, listing every transaction in the account and the Account's holdings. Every share of NGAS deposited into the Account has been accounted for. Finally, following the sell transactions, the Bertalmios withdrew cash from the account.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$200,000.00 which includes punitive damages.

Respondent requested that the Statement of Claim be dismissed, and that all costs be assessed to Claimants.

### **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 original(s) 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:

The claims asserted in this matter are hereby denied with prejudice.

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.

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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Ameritrade, Inc. nka J.P. Securities Inc.

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

**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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
June 20, 2005	1	session		
2 Hearing sessions	x	1,125.00	\$	2,250.00
August 24, 2005	2	sessions		
Total Forum Fees			\$	<u>3,375.00</u>

The Arbitration Panel has assessed \$3,375.00 of the forum fees to Albert and Elsie Bertalmio.

**Fee Summary**

Claimants, Albert and Elsie Bertalmio are jointly and severally liable for:

Initial Filing Fee	= \$	300.00
Forum Fees	= \$	3,375.00
Total Fees	= \$	3,675.00
Less payments	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	2,250.00

Respondent, Ameritrade, Inc. nka J.P. Securities Inc., is liable for:

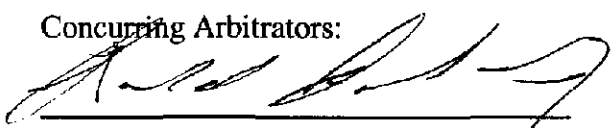
Member Fees	= \$	5,200.00
Total Fees	= \$	5,200.00
Less payments	= \$	-4,450.00
Balance Due NASD Dispute Resolution	= \$	750.00

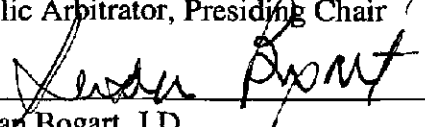
All balances are due to NASD Dispute Resolution

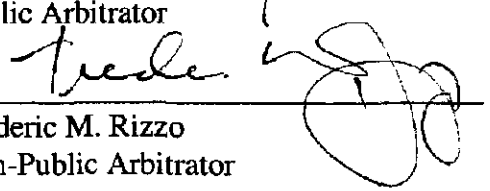
**ARBITRATION PANEL**

Ronald B. Schwartz, Esq. - Public Arbitrator, Presiding Chair  
Susan Bogart, J.D - Public Arbitrator  
Frederic M. Rizzo - Non-Public Arbitrator

Concurring Arbitrators:

  
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Ronald B. Schwartz, Esq.  
Public Arbitrator, Presiding Chair

  
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Susan Bogart, J.D  
Public Arbitrator

  
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Frederic M. Rizzo  
Non-Public Arbitrator

8/24/05  
Signature Date

8/24/05  
Signature Date

8/24/05  
Signature Date

8/25/05  
Date of Service (For NASD office use only)