

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Gerard J. Brien and Jeanne M. Brien (Claimants) vs. E*Trade Securities, LLC, E*Trade Financial Corp., and E*Trade Bank (Respondents)

Case Number: 05-02789

Hearing Site: Buffalo, New York

Nature of the Dispute: Customers vs. Member and Non-Members

REPRESENTATION OF PARTIES

Claimants Gerard J. Brien ("G. Brien") and Jeanne M. Brien ("J. Brien") hereinafter referred to as "Claimants": Steven E. Cole, Esq., Wolford & LeClair LLP, Rochester, NY.

Respondents E*Trade Securities LLC ("E*Trade Securities"), E*Trade Financial Corp. ("E*Trade Financial") and E*Trade Bank ("E*Trade Bank") hereinafter collectively referred to as "Respondents": John Bersin, Esq., E*Trade Securities LLC, Rancho Cordova, CA.

CASE INFORMATION

Statement of Claim filed on or about: May 26, 2005.

Claimant G. Brien signed the Uniform Submission Agreement: February 7, 2005.

Claimant J. Brien signed the Uniform Submission Agreement: February 7, 2005.

Joint Statement of Answer filed by Respondents on or about: August 2, 2005.

Respondent E*Trade Securities did not sign the Uniform Submission Agreement.

Respondent E*Trade Financial did not sign the Uniform Submission Agreement.

Respondent E*Trade Bank signed the Uniform Submission Agreement: August 2, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: unauthorized withdrawals, unauthorized margin trading, breach of fiduciary duty and fraud. The causes of action relate to unspecified securities.

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

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$600,000.00, plus interest, at 9%

per New York CPLR 5003 to the date of payment, and such other and further relief as is deemed just and proper.

Respondents requested dismissal of the Statement of Claim in its entirety, costs and expenses and such other and further relief as this Panel may deem just and necessary.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent E*Trade Securities did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

Respondent E*Trade Financial is not a member of NASD and did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement and having answered the claim, appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

At the hearing, Respondents requested that Arbitrator Gibas recuse himself because of his relationship with an expert witness. Arbitrator Gibas believed that he could render a fair and impartial decision. After due deliberation the request was denied.

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 E*Trade Securities is liable for and shall pay to Claimant Jeanne M. Brien compensatory damages in the amount of \$25,000.00.
2. Any and all relief not specifically addressed herein 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 = \$ 375.00

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 event giving rise to the dispute. Accordingly, E*Trade Securities LLC is a party.

Member surcharge = \$ 2,250.00
Pre-hearing process fee = \$ 750.00

Hearing process fee

= \$ 4,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 @ \$1,200.00/session = \$ 1,200.00
Pre-hearing conference: October 18, 2005 1 session

Three (3) Hearing sessions with Panel @ \$1,200.00/session = \$ 3,600.00
Hearing Dates: April 4, 2006 2 sessions
April 5, 2006 1 session

Total Forum Fees = \$ 4,800.00

1. The Panel has assessed \$2,400.00 of the forum fees jointly and severally to Claimants.
2. The Panel has assessed \$2,400.00 of the forum fees to Respondent E*Trade Securities.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 2,400.00
Total Fees	= \$ 2,775.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

2. Respondent E*Trade Securities LLC is solely liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 2,400.00
Total Fees	= \$ 9,400.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution	= \$ 2,400.00

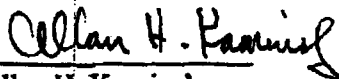
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Allan H. Kaminsky	-	Public Arbitrator, Presiding Chairperson
Kathleen Fay Smith, Esq.	-	Public Arbitrator
Christopher G. Gibas, CFP	-	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 which, is my award.



Allan H. Kaminsky
Public Arbitrator, Presiding Chairperson

4-18-06

Signature Date

Kathleen Fay Smith, Esq.
Public Arbitrator

Signature Date

Christopher G. Gibas, CFP
Non-Public Arbitrator

Signature Date

April 19, 2006

Date of Service (For NASD Dispute Resolution use only)

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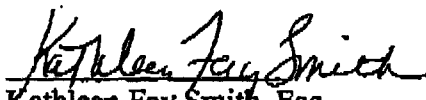
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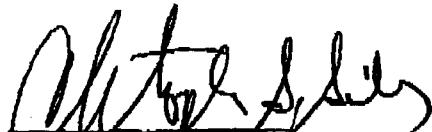
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Christopher G. Gibas, CFP
Non-Public Arbitrator

4/19/06

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April 19, 2006

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