

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

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In the Matter of the Arbitration Between:  
Mike C. Kim, Claimant v. Ameritrade, Inc., Respondent

Case Number: 05-04626

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Marc I. Zussman, Esq.  
Law Offices of Marc I. Zussman  
Los Angeles, California

For Respondent:

James J. Vihstadt, Esq.  
Ameritrade, Inc.  
Bellevue, Nebraska

**CASE INFORMATION**

Statement of Claim filed: September 2, 2005

Claimant's Uniform Submission Agreement signed: September 1, 2005

Statement of Answer filed by Respondent: October 19, 2005

Respondent's Uniform Submission Agreement signed: October 19, 2005

**CASE SUMMARY**

Claimant alleged negligence, breach of fiduciary duty, negligent misrepresentations, constructive fraud, failure to supervise, breach of contract, and violations of federal and state securities law, NASD conduct rules, and NYSE rules. Claimant's claims involved the purchase of stock in Consecro, Inc.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested \$107,222.96 in compensatory damages, unspecified punitive damages, pre- and post-judgment interest, and costs, including attorney's fees, expert witness fees, expenses, and accounting fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety and costs.

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

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:*

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Ameritrade, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

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

The Panel 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 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 conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: December 19, 2005	1 session

3 Hearing sessions @ \$1,125.00/session	= \$ 3,375.00
Hearing: August 1, 2006	2 sessions
August 2, 2006	1 session

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<b>Total Forum Fees</b>	<b>= \$ 4,500.00</b>
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1. The Panel assessed \$2,250.00 of the forum fees to Claimant.
2. The Panel assessed \$2,250.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,550.00
Less payments	= \$(1,425.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,125.00</b>

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 7,450.00
Less payments	= \$(5,200.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,250.00</b>

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

**ARBITRATION PANEL**

Michael Evan Beckman	-	Public Arbitrator, Presiding Chair
Frank L. Wolf	-	Public Arbitrator
Valerie Lewis	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



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Michael Evan Beckman  
Chair, Public Arbitrator

8/2/06  
Signature Date



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Frank L. Wolf  
Public Arbitrator

August 2, 2006  
Signature Date



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Valerie Lewis  
Non-Public Arbitrator

8/2/2006  
Signature Date

8/2/06  
Date of Service