

## **Award NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Scottrade, Inc., Claimant v. DMC Lending, Inc., Respondent

Case Number: 06-02484

Hearing Site: Phoenix, Arizona

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Nature of the Dispute: Member v. Customer

### **REPRESENTATION OF PARTIES**

For Claimant:

Thomas L. Azar, Jr., Esq.  
Thompson Coburn, LLP  
St. Louis, Missouri

For Respondent:

The Company President  
DMC Lending, Inc.  
Fountain Hills, Arizona

### **CASE INFORMATION**

Statement of Claim filed: May 17, 2006

Claimant's Uniform Submission Agreement signed: May 15, 2006

Statement of Answer filed by Respondent: None filed

Respondent's Uniform Submission Agreement signed: None filed

### **CASE SUMMARY**

Claimant alleged that Respondent borrowed \$137,911.91 from Claimant as a margin loan to purchase various securities including Cypress Biosciences, Inc. and CTI Industries Corp. Claimant alleged further that Respondent failed to meet the margin calls.

Respondent did not respond to the Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested \$118,778.30 in compensatory damages and pre- and post-judgment interest at a rate of 10% per annum from October 12, 2005.

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

Respondent DMC Lending, Inc. did not file with NASD Dispute Resolution a properly executed submission agreement; however, said Respondent is required to submit to arbitration and is bound by the determination of the Panel on all issues submitted.

Upon review of the file and the representations made by and on behalf of the Claimant, the undersigned Panel determined that Respondent DMC Lending, Inc. was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

At the hearing Claimant requested an award of attorney's fees and costs in the sum of \$12,086.59.

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) Respondent is liable to and shall pay Claimant the sum of \$118,778.30 in compensatory damages.
- 2) Respondent is liable to and shall pay Claimant interest on the principal sum of \$118,778.30 at a rate of 10% per annum from October 13, 2005 to October 15, 2006 in the sum of \$11,942.91.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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	= \$ 1,000.00
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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 Scottrade, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
<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 arbitrators, including a pre-hearing conference with the arbitrators, that last 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: September 8, 2006	1 session

(1) Hearing session @ \$1,125.00/session	= \$1,125.00
Hearing: October 16, 2006	1 session

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<b>Total Forum Fees</b>	<b>= \$2,250.00</b>
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1. The Panel assessed \$1,125.00 of the forum fees Claimant.
2. The Panel assessed \$1,125.00 of the forum fees to Respondent.

**Fee Summary**

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

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 7,325.00
Less payments	= \$(7,325.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

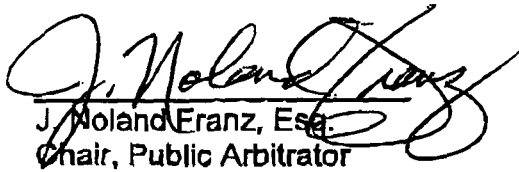
Forum Fees	= \$1,125.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$1,125.00</b>

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**

J. Noland Franz, Esq.	-	Public Arbitrator, Presiding Chair
Howard R. Gaines, Esq.	-	Public Arbitrator
Gordon A. Price	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
J. Noland Franz, Esq.  
Chair, Public Arbitrator

10/25/06  
Signature Date

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Howard R. Gaines, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Gordon A. Price  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

10/26/06  
Date of Service

**ARBITRATION PANEL**

J. Noland Franz, Esq.	-	Public Arbitrator, Presiding Chair
Howard R. Gaines, Esq.	-	Public Arbitrator
Gordon A. Price	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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J. Noland Franz, Esq.  
Chair, Public Arbitrator

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Signature Date

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Howard R. Gaines, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Gordon A. Price  
Non-Public Arbitrator

Oct. 24, 2006  
Signature Date

10/26/06  
Date of Service

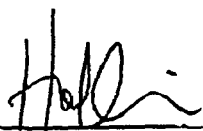
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J. Nolan Franz, Esq.	-	Public Arbitrator, Presiding Chair
Howard R. Gaines, Esq.	-	Public Arbitrator
Gordon A. Price	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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J. Nolan Franz, Esq.  
Chair, Public Arbitrator



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Howard R. Gaines, Esq.  
Public Arbitrator

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Signature Date

10/31/06

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Signature Date

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Gordon A. Price  
Non-Public Arbitrator

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Signature Date

11/7/06

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Date of Service