

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Hui Sun

93-04962

Name of Respondent

E*Trade Securities, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 1, 1993, Claimant Hui Sun, who appeared Pro Se, alleged that Respondent E*Trade Securities, Inc. overcharged him on an order to purchase 3,000 shares of EKC stock, which he should have paid \$25 3/4 per share, but instead was charged \$26 3/4. The Claimant further alleged that through his persistence the price was lowered to \$26, but that the Respondent has failed to fully correct its advertent error, and that therefore, he has suffered damages for which the Respondent should be held liable.

Respondent E*Trade Securities, Inc., through its outside counsel, R. David Mishel, Esq. of Titchell, Maltzman, Mark, Bass et al., San Francisco, CA, maintained that it attempted in good faith to resolve a timing problem and, in fact, resolved the matter giving the Claimant a price at the ask side, plus a 1.5 cent commission. The Respondent contended it did not attempt to defraud the Claimant, that it committed no wrongdoing and therefore the claims of the Claimant should be dismissed.

RELIEF REQUESTED

Claimant Hui Sun requested reimbursement of \$750.00 and \$6,037.00, plus punitive damages in the amount of \$3,000.00 and costs for time spent correcting the error.

Respondent E*Trade Securities, Inc. requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Herbert H. Freise, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 24, 1993 and by the Respondent on February 10, 1994.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimant Hui Sun against Respondent E*Trade Securities, Inc. are dismissed in their entirety.
2. The Claimant's request for punitive damages is denied.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Hui Sun, shall be retained by the NASD, Inc.

AFFIRMATION

I, **HERBERT H. FREISE, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

A handwritten signature in cursive script, reading "Herbert H. Freise", written over a horizontal line.

Signature of Arbitrator

DATE OF DECISION: October 21, 1994