

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joseph F. Smiley & Gerda U. Smiley, TTEE

94-C0887

Name of Respondents

E*TRADE Securities, Inc.
Reynolds Kendrick Stratton, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 8, 1994, Claimants Joseph F. and Gerda U. Smiley, TTEE, who appeared Pro Se, alleged that Respondent E*Trade Securities, Inc., through their clearing agent Reynolds Kendrick Stratton, Inc., sold 1,000 shares of Korea Fund from their account without authorization on December 20, 1993. Claimants alleged that on December 20, 1993 they decided to cancel Korea Fund sell order and that the telephone system of Respondent E*Trade Securities, Inc. requested an order number which E*Trade Securities, Inc. makes no reference to in their operating instructions. Claimants further alleged that they phoned E*Trade Securities, Inc. three times on December 20, 1993 prior to the market being opened and canceled the order with E*Trade Securities, Inc. system and received acknowledgement of cancellation. Claimants asserted that they phoned later on December 20, 1993 only to find out that 1,000 shares of Korea Fund were sold and there was nothing that could be done to recredit the account. Claimants contended that letters and phone calls to Ms. Lee and Mr. Laris of E*Trade Securities, Inc. were to no avail. Claimants further contended that Mr. Laris informed them in response to their letter that had he been notified earlier he would have bought back the 1,000 shares of Korea Fund, but the stock rose sharply after that date to as high as 26 1/4 on December 28, 1993 and E*Trade Securities, Inc. was not willing to accept this much of a loss, and further that Mr. Laris offered to compensate Claimants, but Claimants did not accept the offer; therefore E*Trade Securities, Inc. should be held liable for the loss they incurred.

Respondent Reynolds Kendrick Stratton, Inc., through its in-house counsel, Scott G. Monson, Esq., maintained that the Claimants failed to allege any activity of involvement related to Respondent and denied any and all liability related thereto. Respondent Reynolds

Kendrick Stratton, Inc. further maintained that they made no representations to Claimants and bear no responsibility for market fluctuations. Respondent Reynolds Kendrick Stratton, Inc. requested that Claimants' claim against it be dismissed.

Respondent E*Trade Securities, Inc. through their President Thomas C. Laris, maintained that Claimants did not follow telephone instructions and had they done so they would have been able to cancel the order in a more timely manner. Furthermore, Respondent E*Trade Securities, Inc. maintained that they were not notified of the problem until December 29, 1993. Respondent E*Trade Securities, Inc. also maintained that they cannot be held liable for any alleged lost opportunity to sell the stock at a higher price when there is no way to predict how high a stock will go or when a customer will choose to sell. Therefore, Respondent E*Trade Securities, Inc. maintained that they cannot be held liable in this matter.

In the supplemental Statement of Answer E*Trade Securities, Inc. reiterated that their phone system provides an order number and that although they do not admit any wrongdoing they did try to accommodate Claimants without a reimbursement, Respondent E*Trade Securities, Inc. reiterates that they cannot be held liable for lost opportunity.

In Claimants' reply to Respondent E*Trade Securities, Inc. answer, Claimants alleged that Respondent's Answer contained numerous inaccurate statements. Claimants further reiterated that the instructions available to them at the time of unauthorized trade on December 20, 1993 made no reference to an order number.

In Respondent E*Trade Securities, Inc.'s response to Claimants' reply to answer, Respondent maintained that the phone system provides an order number. Respondent also maintained that Ms. Lee did, in fact, speak with the Claimants prior to the letter of December 29, 1993. Respondent maintained that Claimants' demand is unwarranted and unreasonable.

RELIEF REQUESTED

Claimants Joseph F. and Gerda U. Smiley requested \$8,000.00 in actual damages.

Respondent Reynolds Kendrick Stratton, Inc. requested Claimants' claim be dismissed and further requested that Claimants reimburse Respondent Reynolds Kendrick Stratton, Inc. for its costs, expenses and reasonable attorney's fees.

Respondent E*Trade Securities, Inc. requested that Claimants' claim be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Carole M. Crosby, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on February 15, 1994, by Respondent E*Trade Securities, Inc. on April 18, 1994, but not signed by Respondent Reynolds Kendrick Stratton, Inc. as required by Sections 12 & 13 of the NASD Code of Arbitration Procedure.

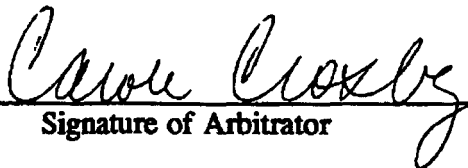
And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of the Claimants Joseph F. and Gerda U. Smiley against Respondent Reynolds Kendrick Stratton, Inc. are dismissed in their entirety.
2. Respondent E*Trade Securities, Inc. is liable and shall pay to the Claimants Joseph F. and Gerda U. Smiley \$785.00 in actual damages.
3. Respondent E*Trade Securities, Inc. is liable and shall pay to the Claimants Joseph F. and Gerda U. Smiley interest in the amount of \$41.21.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc. Respondent E*Trade Securities, Inc. is liable and shall pay to the Claimants Joseph F. and Gerda U. Smiley \$150.00 as reimbursement of the filing fee.

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AFFIRMATION

I, **CAROLE M. CROSBY, 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.



Signature of Arbitrator

DATE OF DECISION:

January 24, 1995