

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Rafel Kucharski

95-03174

Name of Respondents

E* Trade Securities, Inc.
Jeannie Pagnotta

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 30, 1995, Claimant Rafel Kucharski ("Claimant"), who appeared Pro Se, alleged that Respondents E* Trade Securities, Inc. ("ETS"), and Jeannie Pagnotta ("Pagnotta"), sold him 5,000 shares of Genisco Technology Corp. ("GES") on September 19, 1994. Claimant further alleged that on November 30, 1994 GES had a reverse stock split of 10 to 1 which Respondents failed to inform him about. Claimant contended that on December 2, 1994 he sold 5,000 shares of GES after which he was told that because of the reverse split he had oversold his account by 4,500 shares and would have to repurchase 4,500 shares to cover the difference. Claimant further contended that he had placed a "good-till-canceled" sell order for 5,000 shares of GES on November 8, 1994 and that when he contacted ETS on November 29, 1994 he was told that the order had expired and that during this call there was no mention of the reverse split. Claimant alleged that ETS told him he had to purchase the 4,500 share deficit but did not charge him for unknown reasons. Claimant further alleged that he covered the shares and that as a result of the above, he has suffered a loss for which the Respondents should be held liable.

Respondents E* Trade Securities, Inc. and Jeannie Pagnotta, through their representative and President, Thomas C. Laris, maintained that ETS is a discount brokerage which conducts its business on a completely unsolicited basis. Respondents further maintained that it does not provide any investment advice and that its employees are not paid on a commission basis and that Pagnotta works in ETS's compliance department and investigated Claimant's complaint. Respondents contended that the GES reverse stock split occurred on November 29, 1994 and that no proxy was required. Respondents further contended that Claimant was an Interactive Voice Response customer who received a message on their system as follows "All open orders have been cancelled on symbol GES by the Exchange due to the recent split. Please adjust your order accordingly. You may resubmit your order(s) at any time." Respondents maintained that Claimant either did not read the message or ignored it after 1:12pm on November 29, 1994. Respondents further maintained that Claimant was fully advised and that the 4,500 share short position was due to his error. Respondents contended that as a result of the above they should not be held liable.

RELIEF REQUESTED

Claimant Rafel Kucharski, requested \$837.50 in actual damages plus punitive damages.

Respondents E* Trade Securities, Inc. and Jeannie Pagnotta, requested that the claims of the Claimant be dismissed.

AWARD

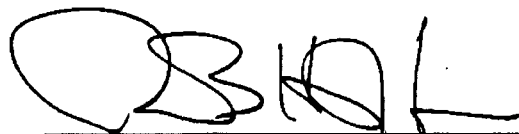
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Robert B. Hoffman, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Rafel Kucharski on June 23, 1995, and by the Respondents E* Trade Securities, Inc. and Jeannie Pagnotta, on September 13, 1995.

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 Rafel Kucharski against Respondent Jeannie Pagnotta, are dismissed in their entirety.
2. The Respondent E* Trade Securities, Inc., is liable and shall pay to the Claimant Rafel Kucharski, \$237.63 in actual damages.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc. The Respondent E* Trade Securities, Inc., is liable and shall pay to the Claimant Rafel Kucharski, \$125.00 as reimbursement of the filing fee.
5. All other relief requests are denied.

AFFIRMATION

I, **ROBERT B. HOFFMAN**, 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.



Robert B. Hoffman

DATE OF DECISION: December 20, 1995