

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

In the matter of the Arbitration Between

**Name of Claimant(s)**

Henry E. Lawrence

NASD Arbitration  
No. 95-03574

**Name of Respondent(s)**

E\*Trade Securities, Inc.

---

**REPRESENTATION**

For Claimant: Henry E. Lawrence, Menlo Park, California

For Respondent: David M. Greenberg, Esq., San Francisco,  
California

**CASE INFORMATION**

Statement of Claim filed: July 20, 1995

Claimant's Submission Agreement signed: July 21, 1995

Statement of Answer filed by Respondent: September 14, 1995

Respondent's Submission Agreement signed: September 11, 1995

**HEARING INFORMATION**

Pre-Hearing Conference Date(s)/Session(s): None

Hearing Date(s)/Session(s): March 8, 1996 (one session)

Hearing Location: San Francisco, California

### CASE SUMMARY

Claimant alleged that Respondent E\*Trade Securities, Inc. (E\*Trade) failed to execute a valid buy order on July 3, 1995 for 4,000 shares of Michaels Stores, Inc. (MIKE) common stock. Claimant further alleged negligence with respect to the handling of his account.

Respondent E\*Trade denied any liability to Claimant and alleged that the subject order by Claimant was rejected by the clearing broker because it had been entered too late for the closing. E\*Trade further alleged that it informed Claimant that his order had not been executed, in a telephone message which was available at 1:00 p.m. EDT on July 3, 1995, but which was not accessed by Claimant until 6:09 p.m. EDT on July 5, 1995. E\*Trade further alleged that it requested Claimant to dismiss his arbitration in light of the price movements of MIKE, which has enabled Claimant to profit on his MIKE trades; and that Claimant refused.

### RELIEF REQUESTED

Claimant requested specific performance and punitive damages. Claimant requested that E\*Trade sell Claimant 4,000 shares of MIKE at 21 1/2 and pay punitive damages for the difference in price, on the day a judgment is rendered, of MIKE multiplied by the number of shares that Claimant attempted to purchase on July 3, 1995, multiplied by 3. Claimant also requested that E\*Trade transfer Claimant's stock, at no cost to Claimant, to the brokerage firm of Claimant's choice, mail Claimant a check for any residual balance Claimant has with E\*Trade, and close Claimant's account.

Respondent E\*Trade requested:

1. That Claimant take nothing by his Statement of Claim;
2. Costs, including attorneys fees, expert fees and other costs; and
3. Such other relief as the arbitrators shall deem appropriate.

### OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the National Association of Securities Dealers, Inc. (NASD).

### AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing and all post-hearing submissions by the parties, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All claims by Claimant, including the claim for punitive damages, are dismissed.
2. The parties shall each bear their respective costs including attorney's fees.

### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund \$250.00 of the \$500.00 hearing session deposit previously deposited by Claimant. Forum fees are to be split between the parties and are calculated as follows:

One hearing session @ \$500.00/session	=	\$500.00
Total fees assessed	=	\$500.00
Claimant's share (50%)	=	\$250.00
Credit for hearing deposit	=	\$250.00
Balance due	=	\$ 0.00
E*Trade's share (50%)	=	\$250.00
Balance due	=	\$250.00

Fees are payable to the National Association of Securities Dealers, Inc.

ARBITRATORS

Name ..... Public / Industry

Judith Ann Newton, Esq.

Public Arbitrator

Maurice Arth

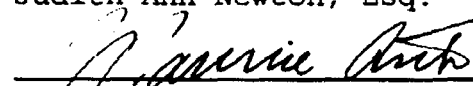
Public Arbitrator

Edgar N. Stone

Industry Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Judith Ann Newton, Esq.

  
\_\_\_\_\_  
Maurice Arth

\_\_\_\_\_  
Edgar N. Stone

Date of Decision: \_\_\_\_\_

Date Served: 04/19/96

ARBITRATORS

Name ..... Public / Industry

Judith Ann Newton, Esq.

Public Arbitrator

Maurice Arth

Public Arbitrator

Edgar N. Stone

Industry Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Judith Ann Newton, Esq.

\_\_\_\_\_  
Maurice Arth

Edgar N. Stone  
Edgar N. Stone

Date of Decision: \_\_\_\_\_

Date Served: 04/19/96