

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Mark Howland Miller

95-04431

Name of Respondent

E*Trade Securities, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on September 18, 1995, Claimant Mark Howland Miller ("Claimant"), who appeared Pro Se, alleged that he held account # 052-55837 with Respondent E*Trade Securities, Inc. ("Respondent"), and that on June 27, 1995, he placed an order in his margin account to buy 2500 shares of American United Global Inc. ("AUGI") at the market. Claimant further alleged that based on previous trades where individual stock prices fell below ten dollars, Respondent stated that it would be a cash position. Claimant contended that based on this information and the amount available in his account, he knew that the maximum price allowed for 2,500 shares would be around \$4.00 dollars a share. Claimant further contended that when he checked to see if the trade was executed, he discovered that it had been executed at \$6.50 a share. Claimant alleged that when he contacted the Respondent about the matter, it responded that the trade was done in good faith and as a result of the above, he has suffered a loss for which Respondent should be liable.

Respondent E*Trade Securities, Inc., through its representative and President, Thomas C. Laris, maintained that on June 27, 1995, it received Claimant's order to purchase 2500 shares of AUGI at the market price. Respondent further maintained that Claimant was aware that a market order would be subject to execution at the current market price, yet he chose to place a market, rather than a limit order. Respondent contended that it is the responsibility of the customer to monitor account balances and place orders appropriately. Respondent further contended that the margin trading guide in the Customer Agreement sets forth the margin parameters under which it operates and there is no rule regarding stocks selling at \$10 or below. Respondent maintained that as a result of the above, it should not be held liable.

RELIEF REQUESTED

Claimant Mark Howland Miller, requested the \$10,000.00 in actual damages.

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, Daniel C. Himelpach, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Mark Howland Miller, on September 12, 1995 and by the Respondent E*Trade Securities on November 2, 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 Mark Howland Miller against Respondent E*Trade Securities are denied in their entirety.

2. The parties shall bear their respective costs.

3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Mark Howland Miller, shall be retained by the NASD, Inc.

AFFIRMATION

I, DANIEL C. HIMELSPACH, 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.


Daniel C. Himelpach, Esq.

DATE OF DECISION: March 14, 1996