

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Fred G. Yee

96-01519

Name of Respondent

E*Trade Securities, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 8, 1996, Claimant Fred G. Yee ("Mr. Yee"), who appeared Pro Se, alleged that on March 19, 1996, he purchased 500 shares of Philip Morris ("MO") through E*Trade Securities, Inc. ("E*Trade"); this trade was set at market price on the close of business on March 18, 1996. Mr. Yee further alleged that on the morning of March 19, 1996, specifically 6:30 a.m. Pacific Standard Time ("PST"), he attempted to cancel this transaction by phone; however, he was told that the trade had possibly been executed. No confirmation of same could be given until 8:20 a.m. PST. Mr. Yee contended that at 6:30 a.m., MO's market price per share was 91 1/2, and between 6:30 a.m. and 8:20 a.m., its price per share ranged from 91 1/2 to 87 3/4. Mr. Yee further contended that he ascertained from E*Trade that his shares of MO were purchased at 6:33 a.m. on March 19, 1996. He also contended that he paid 91 1/2 per share for a stock which, at the time, was worth 87 3/4. Mr. Yee asserted that he immediately sold these shares and this trade was executed at the market price of 87 5/8. As a result of the above, Mr. Yee further asserted that E*Trade should be held liable for the \$2,127.50 loss he incurred of his initial investment.

Respondent E*Trade Securities, Inc., through its representative, Keith Dietrich, Vice President of Compliance at E*Trade, contended that Mr. Yee's order to purchase of 500 shares of Philip Morris at market price was placed at 4:06 p.m. Eastern Daylight Time ("EDT"), after the close of market on March 18, 1996. E*Trade further contended that on March 19, 1996, Mr. Yee requested to cancel said order at 9:33 a.m. EDT, which was 6:33 a.m. PDT; however, he was informed that due to the large trading volume of Philip Morris, his request to cancel could not be honored and determination of the execution of his order could not be made. E*Trade asserted that Mr. Yee's order to purchase shares of Philip Morris was a market order and was placed after his day limit order at 88 3/4 expired. E*Trade further asserted that if Mr. Yee sought to continue to limit his potential risk, he should have entered another limit order so that the shares of Philip Morris would not have been purchased unless the market price hit his designated limit price. As a result of the foregoing, E*Trade maintained that it should not be held liable in this matter.

RELIEF REQUESTED

Claimant Fred G. Yee requested \$2,127.50 in actual damages.

Respondent E*Trade Securities requested that the claims be dismissed in its entirety and that it be awarded legal costs.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Margaret Kallman, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant Fred G. Yee on April 2, 1996, and by the Respondent E*Trade Securities, Inc. on July 10, 1996.

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 Fred G. Yee against the Respondent E*Trade Securities, Inc. are dismissed in their entirety.
2. Respondent's request for attorneys' fees has been denied.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Fred G. Yee, shall be retained by the NASD, Inc.

AFFIRMATION

I, **MARGARET KALLMAN**, 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.


MARGARET KALLMAN

DATE OF DECISION: November 13, 1996

A Brief Explanation of the Arbitrator's Award

Claimant Mr. Yee could have prevented this loss. He could have placed a limit order to limit his risk as he did on the previous day, March 18, 1996, instead of a market order. Possibly he could have decided to cancel earlier and telephoned E*Trade Securities before the market opened on March 19, 1996 to ask that his trade be canceled.