

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Rauf Diab

96-03546

Name of Respondent

E\*Trade Securities, Inc.

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CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on August 16, 1996, claimant Rauf Diab ("claimant") who appeared Pro Se, alleged that he purchased put options through respondent E\*Trade Securities, Inc. ("E\*Trade"), who refused to process subsequent sell orders, including the final market order. Claimant further alleged that on May 16, 1996, he bought SOX (semiconductor) index May 430 put options. Claimant also alleged that he bought 3 puts at 6 1/4 at 12:47 p.m. and realized that it was too early to buy puts, so he placed a limit order to sell the puts at 5 1/2. Claimant asserted that he noticed that the bid slid down to 5 3/8, so he canceled the order at 2:28 p.m. and waited for a better time to sell the puts, because he thought his order may have influenced the options exchange. Claimant further asserted that according to Ken Pietzrak ("Pietzrak") the order was canceled by the Philadelphia Stock Exchange at 2:32 p.m. Claimant also asserted that on May 16, 1995, he placed an order to sell the puts at 5 7/8, but this order was rejected by the E\*Trade broker because they had not received "an out" or confirmed cancel on the first order.

Claimant contended that about 3:50 p.m., he tried to place a limit order to sell his 3 contracts at 5 1/8, but this order was rejected by E\*Trade. Claimant further contended that it was not his intention to hold the option until the next morning, so he placed a market order to sell the contracts at 4:00 p.m. when the bid was at 4 3/4. Claimant also contended that the order was rejected again because the E\*Trade broker had not yet received a confirmed cancel on the first sell order. Claimant alleged that according to PHLX the order was in fact canceled at 2:32 p.m., only four minutes after his cancel order had been placed. Claimant further alleged that the next day the value of the puts dropped rapidly to below one dollar in minutes. Claimant also alleged that the E\*Trade broker offered him advice by stating that in the future he should use the change order menu to avoid this type of problem, instead of canceling and replacing it with a brand new order.

Respondent E\*Trade through its representative and Compliance Analyst Tamiko Moore, Esq., maintained that E\*Trade correctly handled claimant's orders to sell 3 put contracts. Respondent further maintained that claimant entered a request to cancel his sale order. Respondent also maintained that because the status of claimant's first order was not known when claimant tried to enter additional orders to sell the same contracts, it made a reasonable decision to reject his subsequent order. Respondent contended that if claimant had been allowed to enter such orders, it would have risked a situation in which all of claimant's orders would have executed and he could easily have sold 9 contracts.

Respondent further contended that claimant could have simply changed his original order, rather than risking the possibility of double or triple executions by entering new orders on the same contracts. Respondent also contended that they offer their customers a "change/cancel" feature when customers wish to adjust their orders. Respondent maintained that had claimant chosen this feature, he could have adjusted his order.

#### **RELIEF REQUESTED**

Claimant Rauf Diab requested that E\*Trade pay the market value of the put contracts at the May 16 market close, plus arbitration fees.

Respondent E\*Trade requested that the claims of the claimant be dismissed in their entirety.

#### **AWARD**

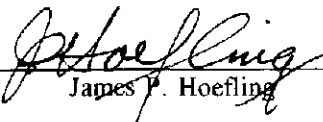
Pursuant to Section 10302 of the NASD Code of Arbitration Procedure a single Public Arbitrator, James P. Hoefling was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Rauf Diab on July 19, 1996 and not by respondent E\*Trade Securities, Inc. as required by Sections 10301 and 10302 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 claimant Rauf Diab against respondent E\*Trade Securities are dismissed in their entirety.
2. All other relief requests are denied.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by claimant Rauf Diab shall be retained by NASD Regulation, Inc.

#### **AFFIRMATION**

I, **James P. Hoefling**, 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.

  
James P. Hoefling

Date of Decision: March 6, 1997