

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:  
Lael Desmond, (Claimant) vs. Ameritrade Inc., (Respondent).

Case Number: 98-04397

Hearing Site: Indianapolis, Indiana

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**REPRESENTATION OF PARTIES**

Claimant, Lael Desmond ("Desmond"): Mark E. Maddox, Esq. and Jeff Gery Esq., Maddox, Koeller, Hargett & Caruso, Indianapolis, IN.

Respondent, Ameritrade Inc. ("Ameritrade"): Patrick B. Griffin, Esq., *Kutak Rock, Omaha, NE.*

**CASE INFORMATION**

Statement of Claim filed on or about: November 23, 1998.

Claimant, *Lael Desmond*, signed the Uniform Submission Agreement: November 17, 1998.

Statement of Answer filed by Respondent, Ameritrade, Inc. on or about: April 21, 1999.

Respondent, Ameritrade, Inc., signed the Uniform Submission Agreement: March 3, 1999.

**CASE SUMMARY**

Claimant asserted the following causes of action: negligence; suitability; misrepresentation; unauthorized trading; breach of contract; breach of fiduciary duty; violations of securities laws and NASD regulations, and unreasonable business conduct. The causes of action relate to the purchases and sales of Microsoft, Amazon.Com, Dell Computer, Excite and Yahoo, America Online.

Unless specifically admitted in its Answer, Respondent Ameritrade, Inc. denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's failure to mitigate his claims and failure to state a claim upon which relief can be granted.

### **RELIEF REQUESTED**

Claimant Lael Desmond requested:

Compensatory Damages	\$ 75,000.00
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	\$150,000.00

Respondent Ameritrade, Inc. requested:

Other Monetary/Non-Monetary Relief:	unspecified
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### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That the Respondent Ameritrade Inc. is liable for and shall pay Claimant Lael Desmond compensatory damages in the amount of twenty thousand six hundred and nine dollars (\$20,609.00); and
2. That the Respondent Ameritrade Inc. is liable for and shall pay Claimant Lael Desmond interest on the compensatory damages in the amount of two thousand sixty one dollars (\$2,061.00); and
3. That the Respondent Ameritrade Inc. is liable for and shall pay Claimant Lael Desmond Attorney's Fees in the amount of seventeen thousand five hundred dollars (\$17,500.00) and costs in the amount of three hundred forty four dollars (\$344.00) In deciding to award Attorney's Fees and costs the panel reviewed and considered the pleadings, briefs, and state and federal securities laws including Indiana Securities Act 23-2-1-19(a) and determined that authority exists for an award of Attorney's Fees and costs; and
4. That any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$200.00

**Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,500.00  
 Pre-hearing process fee = \$ 600.00  
 Hearing process fee = \$2,500.00

**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$300.00 = \$600.00  
 Pre-hearing conference: October 19, 1999 1 session  
 September 9, 1999 1 session

One (1) Pre-hearing session with Panel x \$750.00 = \$750.00  
 Pre-hearing conferences: August 10, 1999 1 session

Four (4) Hearing sessions x \$750.00 = \$3,000.00  
 Hearing Dates: December 1, 1999 2 sessions  
 December 2, 1999 2 sessions

Total Forum Fees = \$4,350.00

- 1. The Panel has assessed \$2,175.00 of the forum fees to *Claimant Lael Desmond*.
2. The Panel has assessed \$2,175.00 of the forum fees to Respondent Ameritrade, Inc.

**Fee Summary**

1. Claimant, *Lael Desmond*, be and hereby is solely liable for:
 

Initial Filing Fee	= \$ 200.00
Member Fees	= \$0
Adjournment Fee	= \$0


Forum Fees	= \$2,175.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$2,375.00
<u>Less payments</u>	= \$ 950.00
Balance Due NASD Regulation, Inc.	= \$1,425.00

2. Respondent, Ameritrade, Inc., be and hereby is solely liable for:

Member Fees	= \$4,600.00
Adjournment Fee	= \$ 0
Forum Fees	= \$2,175.00
<u>Administrative Costs</u>	= \$ 0
Total Fees	= \$6,775.00
<u>Less payments</u>	= \$4,600.00
Balance Due NASD Regulation, Inc.	= \$2,175.00

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

  
Arthur Medow, Esq.  
Public Arbitrator, Presiding Chair

January 11, 2000  
Signature Date

\_\_\_\_\_  
John W. Guy  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Donald Fletcher  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)

Forum Fees	= \$2,175.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$2,375.00
<u>Less payments</u>	= \$ 950.00
Balance Due NASD Regulation, Inc.	= \$1,425.00

2. Respondent, Ameritrade, Inc., be and hereby is solely liable for:

Member Fees	= \$4,600.00
Adjournment Fee	= \$ 0
Forum Fees	= \$2,175.00
<u>Administrative Costs</u>	= \$ 0
Total Fees	= \$6,775.00
<u>Less payments</u>	= \$4,600.00
Balance Due NASD Regulation, Inc.	= \$2,175.00

All balances are due to NASD Regulation, Inc.

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Arthur Medow, Esq.  
Public Arbitrator, Presiding Chair

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1-11-2000  
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Signature Date

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Donald Fletcher  
Industry Arbitrator

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Signature Date

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Date of Service (For NASD office use only)

2. Respondent, Ameritrade, Inc., be and hereby is solely liable for:

Member Fees	= \$4,600.00
Adjournment Fee	= \$ 0
Forum Fees	= \$2,175.00
<u>Administrative Costs</u>	<u>= \$ 0</u>
Total Fees	= \$6,775.00
<u>Less payments</u>	<u>= \$4,600.00</u>
Balance Due NASD Regulation, Inc.	= \$2,175.00

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Arthur Medow, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

John W. Guy  
Public Arbitrator

Signature Date

Donald Fletcher  
Industry Arbitrator

*Donald Fletcher*

1/13/2000

Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)