

N.A.S.D. REGULATION AWARD
NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

CASE: 99-0027

Robert and Maxine Teitler, claimants vs. Ameritrade, Inc., respondent.

ATTORNEYS:

Claimants, Robert and Maxine Teitler, appeared Pro Se., New York, NY.

James A. Ricketts, Vice President of Ameritrade, Inc., appeared for Respondent, Bellevue, NE.

DATE FILED: 01/04/99

CASE SUMMARY: Claimant alleged failure to process an on-line stop order for shares of OnSale in a timely manner.

Claim Data

Claim: \$7,670.00
Interest: Unspecified

Award Data

Award: \$.00
Interest: \$.00

ARBITRATOR'S REPORT: The facts of this matter are substantially uncontroverted. On Sunday, November 29, 1998, claimants Robert and Maxine Teitler placed a stop-loss order with respondent Ameritrade, Inc., to sell 250 shares of OnSale, Inc. (ONSL) at a price of 90 "stop," good 'till canceled.¹ Respondent, which does not make a market in ONSL, promptly transmitted the order to its clearing firm, Advanced Clearing, Inc., and the order thence transmitted to Knight Securities, a marketmaker.

When the over-the-counter trading commenced on Monday, November 30, 1998, there was a substantial order imbalance for ONSL, and the stock price declined precipitously after the opening. Although claimants' sell order was executed within a few minutes after the respondents' stop price had been reached (thereby rendering the order a market order), the trade was confirmed at 49 1/2²-well below the 90 price to which claimants had expected to limit their losses.

¹On the previous trading day, November 27, ONSL had closed at 97 5/8, after having opened at 71 1/2 and traded as high as 100 and as low as 66 that day. Trading in ONSL was clearly volatile and it goes without saying that this very volatility was the reason for claimant's attempt to protect what appear to have been substantial unrealized gains in the stock.

²Respondent procured the market maker's later agreement to revise the execution price to 59 3/8.

ARBITRATOR'S REPORT CONTINUED: While claimants have suffered a substantial loss as a result of the failure of their order to be executed at or near their stop price, there is no evidence that the loss was caused by the misconduct of respondent.

A trader in volatile stocks assumes the risk that market orders (or stop-loss orders which become market orders by virtue of reaching the stop price) will not be executed at a price anywhere near the market price at the time the order first becomes executable. As respondent correctly points out in its Answer, claimants could have placed their order as a stop-limit order but failed to do so.

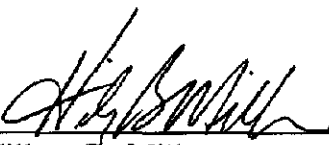
Respondent fulfilled its duty to claimants by transmitting their order to the marketmaker on the next business day promptly after its receipt from claimants and by attempting to intercede on claimants' behalf with the marketmaker in order to obtain a better execution price after the trade had been reported. There is no evidence that the marketmaker processed claimant's order on anything other than a first-come, first-served basis. There is no evidence that respondent was less than diligent in following up with the marketmaker after claimants' complaint.

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of claimant are dismissed in their entirety. 2) All other relief requests are denied. 3) The \$150.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the claimant, shall be retained by NASD Regulation, Inc.

OTHER FEES: Pursuant to Rule 10333 of the Code, respondent has paid to NASD Regulation, Inc. the \$300.00 Member Surcharge previously invoiced.

AFFIRMATION

I, Hillary B. Miller, do hereby affirm, pursuant to article 7507 of the Civil Practice law and Rules, that I am the individual described herein, and who executed this instrument, which is my oath and award.


Hillary B. Miller

October 4, 1999
Date of award