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**Award**  
NASD Regulation, Inc.

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In the Matter of the Arbitration Between

Name of Claimant

Maximilian Palena,  
Trustee of the Maximilian Palena Living Trust

Case No. 99-00048  
Hearing Site: Tampa, Florida

Names of Respondents

DLJdirect Inc.  
Joe L. Roby

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**REPRESENTATION OF PARTIES**

Claimant Maximilian Palena, Trustee of the Maximilian Palena Living Trust, hereinafter referred to as "Claimant", appeared pro se.

For Respondent DLJdirect Inc., hereinafter referred to as "DLJ": David J. Campbell, Senior Vice President, Assistant General Counsel, Donaldson, Lufkin & Jenrette Securities Corp., Jersey City, New Jersey, until March 2, 2000. Thereafter, appearing for Respondent DLJ: Caroline K. Hall, Esq. of the law firm of Rosenman & Colin, LLP, New York, New York.

Respondent Joe L. Roby, hereinafter referred to as "Roby", did not appear

**CASE INFORMATION**

Statement of Claim filed on or about: December 31, 1998.

Letter dated May 25, 1999 from Claimant to NASD Regulation, Inc. filed.

Claimant Maximilian Palena, Trustee of the Maximilian Palena Living Trust, signed the Uniform Submission Agreement: January 28, 1999.

Statement of Answer filed by Respondent DLJ on or about: April 20, 1999.

Respondent DLJ signed the Uniform Submission Agreement: April 20, 1999 by Anthony Festa, Senior Vice President, DLJ.

Respondent Roby did not file a Statement of Answer or executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant alleged the following: DLJ delayed transferring the assets in Claimant's account at Scottsdale Securities to DLJ; DLJ failed to immediately allow Claimant to carry the account

on margin; DLJ refused to accept Claimant's orders to purchase options in Orbital Sciences in the account; and, Claimant suffered undue stress, insult, loss of investment time, monetary damages and loss of the ability to trade options.

Unless specifically admitted in its Answer, DLJ denied the allegations made in the Statement of Claim and asserted the following: DLJ processed the account transfer in an accurate and timely manner; DLJ is under no obligation to immediately allow Claimant to carry his account on margin and acted properly in initially withholding margin privileges from Claimant; initially Claimant had not expressed an interest in trading options, or requested an options application; and, once the application was received, DLJ was within its rights to reject said application.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$50,000.00; replacement of 1,000 shares of Orbital Sciences; punitive damages; attorney's fees and costs incurred in bringing this proceeding; and, any and all relief deemed just and proper by the arbitration panel (the "Panel").

Respondent DLJ requested an award dismissing all claims against it, together with its costs and attorney's fees incurred herein.

### **OTHER ISSUES CONSIDERED AND DECIDED**

At the evidentiary hearing, Claimant confirmed that he had dismissed, without prejudice, all claims against Respondent Joe L. Roby. Therefore, the Panel did not make any determinations with respect to Respondent Roby.

The parties present at the hearing 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent DLJ is found liable and shall pay to Claimant compensatory damages in the amount of \$11,300.00.
2. Claimant's request for punitive damages is denied.
3. Respondent DLJ is found further liable and shall reimburse Claimant the sum of \$120.00 for the claim filing fee paid to NASD Regulation, Inc.

4. Any other claims for relief not specifically addressed herein are 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 = \$120.00

#### Member Fees

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

Member surcharge	= \$800.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$1,500.00

#### 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 arbitrators, including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$300.00	= \$300.00
Pre-hearing conference date: January 18, 2000	1 session
Two (2) Pre-hearing sessions with Panel x \$500.00	= \$1,000.00
Pre-hearing conference date: September 29, 1999	1 session
Pre-hearing conference date: March 2, 2000	1 session
Three Hearing sessions x \$500.00	= \$1,500.00
Hearing Date: March 7, 2000	3 sessions
Total Forum Fees	= \$2,800.00

The Panel has assessed the total forum fees of \$2,800.00 to Respondent DLJ.

### Fee Summary

Claimant be and hereby is solely liable for:

<u>Initial Filing Fee</u>	= \$120.00
Total Fees	= \$120.00
<u>Less payments</u>	= \$120.00
Balance Due NASD Regulation, Inc.	= \$0.00

**Respondent DLJ be and hereby is solely liable for:**

Member Fees	= \$2,900.00
<u>Forum Fees</u>	<u>= \$2,800.00</u>
Total Fees	= \$5,700.00
<u>Less payments</u>	<u>= \$2,400.00</u>
Balance Due NASD Regulation, Inc.	= \$3,300.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

/s/  
**Andrew J. Bolnick**  
Public Arbitrator, Presiding Chair

Signature Date

/s/  
**Dale W. Hagen, Esq.**  
Public Arbitrator

Signature Date

/s/  
**William H. McCullogh**  
Industry Arbitrator

Signature Date

**April 18, 2000**

**Date of Service (For NASD office use only)**

Respondent DLJ be and hereby is solely liable for:

Member Fees	= \$2,900.00
<u>Forum Fees</u>	= <u>800.00</u>
Total Fees	= \$5,700.00
<u>Less payments</u>	= <u>\$2,400.00</u>
Balance Due NASD Regulation, Inc.	= \$3,300.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**



Andrew J. Bolnick  
Public Arbitrator, Presiding Chair

4-5-2000  
Signature Date

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Dale W. Hagen, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
William H. McCulloch  
Industry Arbitrator

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

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Date of Service (for NASD office use only)

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Signature Date

Dale W. Hagen  
Dale W. Hagen, Esq.  
Public Arbitrator

April 14, 2000  
Signature Date

\_\_\_\_\_  
William H. McCulloch  
Industry Arbitrator

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Signature Date

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Dale W. Hagon, Esq.  
Public Arbitrator

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

William H. McCullogh  
William H. McCullogh  
Industry Arbitrator

4-13-00  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD *offi*ause only)