

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

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In the Matter of the Arbitration Between:  
William Monte, (Claimant) vs. Ameritrade, Inc., (Respondents).

Case Number: 99-00141

Hearing Site: San Francisco, California.

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**REPRESENTATION OF PARTIES**

William Monte hereinafter referred to as "Claimant": William Monte represented himself.

Ameritrade, Inc. hereinafter referred to as "Respondent": James J. Vihstadt, Esq., Ameritrade, Inc., Omaha, Nebraska.

**CASE INFORMATION**

Statement of Claim filed on or about: January 4, 1999.

Claimant signed the Uniform Submission Agreement: February 20, 1999.

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

Respondent executed the Uniform Submission Agreement: April 22, 1999.

**CASE SUMMARY**

Claimant asserts that after several delays by the Respondent in posting moneys he had forwarded to make stock transactions he converted his account for margin trading based on the Respondent's suggestion. Claimant asserts that he was not properly made aware of the risks of margin trading or the possibility that stocks could be sold off with little or no notice. Claimant asserts that the Respondent's liquidation of his account was improper due to their failure to make full disclosure of the margin terms in compliance with the Federal Reserve Truth in Lending Laws and S.E.C. Rule 10b-16.

The Respondent argued that accounts held with Ameritrade are self-directed (i.e. Ameritrade does not make any recommendations and account holders manage their own accounts, including the placement of trade orders). Beginning in early September, 1998, Mr. Monte purchased shares of Ciena Corp. (CIEN) at regular intervals through early October. Claimant continued to purchase that security until he held 1800 shares of CIEN, most of which were bought on margin. Monte held a concentrated position during that period, purchasing more shares of CIEN even as the trading price of that security continued to decline dramatically throughout that month. Beginning in early October 1998, margin calls were issued in Monte's account. Various written communications and telephone calls were made to Mr. Monte, which provided instructions for him to satisfy the margin calls. Those attempts to have Mr. Monte satisfy the margin requirements were unsuccessful, as Mr. Monte did not take the requested action or communicate

with Ameritrade. The margin calls in Mr. Monte's account were coming due and the trading price of that security (and thus the collateral against which Monte's margin purchases were borrowed) continued to fall.

Due to the continuing decline in CIEN, the inability to reach Mr. Monte directly, and his failure to deposit money or sell securities to meet the margin calls despite numerous telephone messages and multiple letters, a decision was made to liquidate securities sufficient to satisfy the calls in his account and cover the margin balance owed before the margin account became unsecured. At that point, given the circumstances, Ameritrade had no option but to liquidate his securities. Accordingly, on October 12, 1998, Monte's account sold 1,275 shares of CIEN at 8 9/16.

Ameritrade did not receive the required funds from Mr. Monte in a timely manner, and the severe decline in the value of his securities required that action be taken in this case. The value of CIEN was falling steadily. A reasonable, prudent investor would have taken every precaution to immediately wire funds into his account if he wished to hold those securities. Monte did not communicate with the Credit Department representative who had left multiple messages for him, despite the continued decline in the value of his securities and repeated communications imploring him to deposit funds. Ameritrade had the legal right to liquidate securities, notified Mr. Monte when he opened his account that such action would be taken in circumstances such as this, and it was appropriate to take such action.

#### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$12,634.47
Other Non-Monetary Relief if any:	Claimant request treble damages and the right to purchase 1,235 shares of CIEN at \$8.56.25.

Respondents requested:

Other Costs	To be determined by the panel.
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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, 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. The Claimant is awarded and Respondent shall pay to Claimant the sum of \$10,916.82. The panel has determined that Ameritrade failed to disclose in a timely fashion the terms and conditions of margin accounts pursuant to S.E.C. regulations;
2. All other claims in the Statement of Claim are dismissed;
3. Each side to bear their own costs and expenses, including attorneys' fees.

### **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

#### **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, Ameritrade, Inc. is a party.

Member surcharge	= \$ 800
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1,000

#### **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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with Panel x \$400 = \$400

Pre-hearing conference date: September 24, 1999 1 session.

One (1) Hearing sessions x \$400 = \$400

Hearing Date: January 11, 2000 1 session.

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Total Forum Fees = \$800

1. The Arbitrator Panel has assessed \$400 of the forum fees to Claimant.
2. The Arbitrator Panel has assessed \$400 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is solely liable for:

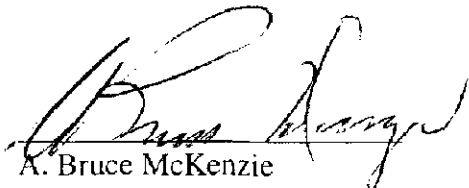
Initial Filing Fee	= \$120
<u>Forum Fees</u>	<u>= \$400</u>
Total Fees	= \$520
<u>Less payments</u>	<u>= \$520</u>
Balance Due NASD Regulation, Inc.	= \$ 0

2. Respondent is solely liable for:

Member Fees	= \$2,400
<u>Forum Fees</u>	<u>= \$ 400</u>
Total Fees	= \$2,800
<u>Less payments</u>	<u>= \$2,400</u>
Balance Due NASD Regulation, Inc.	= \$ 400

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

Concurring Arbitrators' Signature(s)



A. Bruce McKenzie  
Public Arbitrator, Presiding Arbitrator

1/30/2000 *fm*  
Signature Date

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Thomas C. McNally, III, Esq.  
Public Arbitrator

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Signature Date

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Rita Gordon-Carrow  
Industry Arbitrator

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Signature Date

Date Served:  
FEB 01 2000

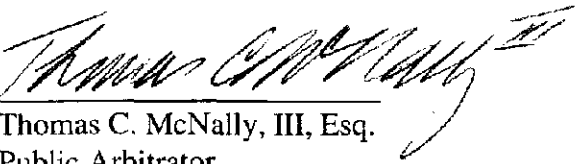
**Concurring Arbitrators' Signature(s)**

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A. Bruce McKenzie  
Public Arbitrator, Presiding Arbitrator

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Signature Date



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Thomas C. McNally, III, Esq.  
Public Arbitrator

1-26-00

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Signature Date

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Rita Gordon-Carrow  
Industry Arbitrator

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Signature Date

Date Served:

FEB 01 2000


**NASD  
S.F. ARBITRATION**

**A. Bruce McKenzie**  
Public Arbitrator, Presiding Arbitrator

Signature Date

**Thomas C. McNally, III, Esq.**  
**Public Arbitrator**

Signature Date

  
Rita Gordon-Carrow  
Industry Arbitrator

1-31-00  
Signature Date

**Date Served:**

FEB 01 2000