

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Mitchell Pasquin, (Claimant) vs. Datek Online Brokerage Services Corp. and Datek Securities Corp. (Respondents).

Case Number: 99-00329

Hearing Site: San Francisco, California.

REPRESENTATION OF PARTIES

Mitchell Pasquin hereinafter referred to as "Claimant": Michael A. Fluetsch, Esq., Stockton, California.

Datek Online Brokerage Services Corp. and Datek Securities Corp. hereinafter referred to as "Respondent": Fredrick A. Rafeedie, Esq., Jones, Bell, Abbott, Fleming & Fitzgerald, Los Angeles, California.

CASE INFORMATION

Statement of Claim filed on or about: January 5, 1999.

Claimant signed the Uniform Submission Agreement: January 7, 1999.

Answer of Respondent to Statement of Claim and Counter-claim was filed on or about: April 27, 1999.

Respondent executed the Uniform Submission Agreement: June 28, 1999.

CASE SUMMARY

Claimant asserts that Datek's negligently reported inaccurate stock prices. Claimant further asserts that Datek's subsequent attempt to avoid responsibility by re-characterizing its customer's stock trades by unlawfully manipulating its customer's stock portfolio without his knowledge and consent were fraudulent and malicious. Additionally, Claimant asserts that Datek was grossly negligent and that it knowingly and intentionally breached its fiduciary duty to its customer. At issue was the Claimant's sale of 25,000 shares of Eclipse Corp. (ECLP).

Respondent denied the allegations made in the Statement of Claim. Respondent argues that Claimant reviewed his account and purportedly discovered that his Eclipse Corp. stock, which had been trading at 19 cents per share and had a market value of \$4,750 the day before, was now reportedly valued at \$390,000. Respondent argues that upon seeing this blatantly erroneous information, Claimant, in an effort to take unfair advantage of this clearly erroneous information and to unjustly enrich himself, immediately ordered Datek Online to sell 25,000 shares of "ECLP" stock. Because the symbol ECLP had already been assigned to a different company, Eclipsys Corporation, Claimant's order was actually an order to sell stock which he did not own. Claimant's

sell order resulted in a credit to Claimant's account of \$392,000. Respondent argues that in an effort to further take advantage of the situation Claimant ordered Datek Online to send him, by overnight mail, \$100,000 of the \$392,000 erroneously credited to his account.

Respondent, in its counter-claim, argued that Claimant was responsible by virtue of the written contract for the debit balance in his account which was created when Datek bought in to cover the short sale in Claimant's account.

RELIEF REQUESTED

Claimants requested:

Compensatory Damages	\$397,731.51
Punitive Damages	To be determined by the panel
Other Monetary/Non-Monetary Relief if any:	To be determined by the panel.

Respondents requested:

Compensatory Damages	\$35,194.34 plus interest.
All Costs	To be determined by the panel.
Other Monetary/Non-Monetary Relief if any:	To be determined by the panel.

OTHER ISSUES CONSIDERED AND DECIDED

Datek Online Brokerage Services Corp. was formerly known as Datek Securities Corp.

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 \$40,000 in general damages;
2. The Claimant is awarded and Respondent shall pay to Claimant the sum of \$45,000 in punitive damages;
3. Any and all other claims asserted in the Statement of Claim are dismissed;

4. Each and every claim in the counter-claim is dismissed;
5. 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 = \$200

Counter claim = \$500

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, Datek Securities Corp. is are a party.

Member surcharge	= \$1,500
Pre-hearing process fee	= \$ 600
<u>Hearing process fee</u>	<u>= \$2,500</u>
Total member fees	= \$4,600

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 a single arbitrator x \$300 = \$ 300

Pre-hearing conference(s): November 9, 1999 1 session.

Two (2) Pre-hearing session(s) with panel x \$750 = \$1,500

Pre-hearing conference(s): September 21, 1999 1 session;
January 21, 2000 1 session.

Three (3) Hearing sessions x \$750 = \$2,250

Hearing Date(s): January 31, 2000 2 sessions;
February 1, 2000 1 session.

Total Forum Fees	= \$4,050
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The panel has assessed all the forum fees to Datek Securities Corp.

Fee Summary

1. Claimant is solely liable for:


Initial Filing Fee	= \$200
Total Fees	= \$200
Less payments	= \$950
Balance <Refund>	= <\$750>

2. Respondent is solely liable for:

Counter-Claim Filing Fee	= \$ 500
Member Fees	= \$4,600
Forum Fees	= \$4,050
Total Fees	= \$9,150
Less payments	= \$5,700
Balance Due NASD Regulation, Inc.	= \$3,450

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

Concurring Arbitrators' Signature(s)


Alfred P. Knoll, Esq.
Public Arbitrator, Presiding Chair

2/3/00
Signature Date

John T. Collentine
Public Arbitrator

Signature Date

Timothy P. Bogan, CPA
Industry Arbitrator


Signature Date

Date Served:
FEB 10 2000

Concurring Arbitrators' Signature(s)

Alfred P. Knoll, Esq.
Public Arbitrator, Presiding Chair

Signature Date



John T. Collentine
Public Arbitrator

4 Feb 2000

Signature Date

Timothy P. Bogan, CPA
Industry Arbitrator

Signature Date

Date Served:
FEB 10 2000


Concurring Arbitrators' Signature(s)

Alfred P. Knoll, Esq.
Public Arbitrator, Presiding Chair

Signature Date

John T. Collentine
Public Arbitrator

Signature Date


Timothy P. Bogan, CPA
Industry Arbitrator


Signature Date

Date Served:

FEB 1 5 2000

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