

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

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In the Matter of the Arbitration Between

**Name of Claimant**

Christopher Amado Alvarez

Case No. 99-00736

**Names of Respondents**

Jon Normile  
Michael G. Hardiman  
Datek Online Brokerage Services Corp.

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**REPRESENTATION OF PARTIES**

Claimant Christopher Amado Alvarez ("Alvarez") appeared pro se.

For Respondents Jon Normile ("Normile"), Michael G. Hardiman ("Hardiman") and Datek Online Brokerage Services Corporation ("Datek"), collectively referred to as "Respondents": G. Thomas Fleming, III, Esq. of Jones, Bell, Abbott, Fleming & Fitzgerald, LLP, Los Angeles, CA.

**CASE INFORMATION**

Statement of Claim filed on or about February 18, 1999.  
Claimant signed the Uniform Submission Agreement on February 16, 1999.  
Joint Statement of Answer filed by Respondents on or about June 4, 1999.  
Respondent Datek signed the Uniform Submission Agreement on April 19, 1999.  
Respondent Normile signed the Uniform Submission Agreement on April 19, 1999.  
Respondent Hardiman signed the Uniform Submission Agreement on April 19, 1999.  
Counterclaim filed by Datek on or about June 16, 1999.  
Reply to Counterclaim filed by Claimant on or about September 21, 1999.

**CASE SUMMARY**

Claimant alleged the following: Respondents negligently and knowingly fraudulently handled Claimant's account for their own gain and at a substantial loss to Claimant; as a result, Claimant had significantly more buying power in his account which he believed, at the time, was profit resulting from a trade he had authorized; that Datek is liable for the ultimate losses in Claimant's account at issue; that these losses were caused because Datek did not possess appropriate fail-safes to prevent its electronic ordering system from performing unauthorized trades; that Respondents have expended substantial resources to avoid repeating this type of error; that Respondents have a legal obligation to treat customers fairly; and, that Respondents are liable for their failures.

Respondents alleged the following: Claimant opened an online brokerage account with Datek on or about May 30, 1998. In connection with the opening of his Account, Claimant agreed to abide by the terms of the Datek Customer Agreement. On June 24, 1998, Claimant purchased 464 shares of Sunbeam-Oster Company, Inc. ("SOC") stock at a limit price of 12 3/8, for a total cost of \$4,611.00. Due to an electronic malfunction and subsequent trading by Claimant, Claimant's account received an erroneous credit of \$27,499.50. On July 23, 1999, Datek discovered and reversed the effect of the malfunction which resulted in a loss to Claimant.

Before Datek reversed the malfunction, Claimant used the \$27,499.50 to execute a trade which resulted in an even greater loss. Within two days, Claimant's account generated a margin account debit of nearly \$98,000.00. In order to ensure compliance with "Regulation T" and NASD Rule 2520, on July 24, 1999, Datek "covered" the short position in Claimant's account. The net result of the transactions described above is a debit balance in Claimant's account of \$25,820.00.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$3,225.00 plus interest, reimbursement of all filing fees and costs, and equitable relief as the Panel deemed just. Claimant further requested a dismissal of Respondents' counterclaim.

Respondents requested that the Statement of Claim be dismissed; compensatory damages on their counterclaim in the amount of \$25,820.00; interest; costs; attorneys' fees; that Claimant be required to pay all costs incurred in these proceedings; and, for such other and further relief as the Panel deemed appropriate.

#### **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:

Claimant's claims against all Respondents are dismissed in their entirety. Further, the Panel finds that the Claimant provided no evidence to support its claims against Hardiman and Normile. However, the panel finds Datek comparatively negligent in that pursuant to the peculiar and specific facts of this case, it failed to have an appropriate safeguard to identify and give timely notice to the online investor who made a single trade in an amount significantly different from his established trading patterns either as to share or dollar volume.

Claimant is liable on the counterclaim and shall pay to Respondent Datek compensatory damages in the sum of \$18,634.14.

Claimant is liable and shall pay to Respondent Datek its attorneys' fees in the sum of \$3,750.00 pursuant to the contract between the parties.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Normile's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to the NASD Notice to Members 99-90, Respondent Normile must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Hardiman's registration records maintained by the CRD, with the understanding that pursuant to the NASD Notice to Members 99-90, Respondent Hardiman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all relief not specifically addressed herein 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	= \$ 100.00
Counterclaim filing fee	= \$ 500.00

#### **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 Datek is a party.

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1000.00

#### **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 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: November 19, 1999 1 session	

One (1) Pre-hearing session with Panel x \$400.00		= \$ 400.00
Pre-hearing conference: September 15, 1999	1 session	
Three (3) Hearing sessions x \$400.00		= \$1200.00
Hearing Dates: December 16, 1999	2 sessions	
December 17, 1999	1 session	
Total Forum Fees		= \$1900.00

The Panel has assessed \$950.00 of the forum fees to Claimant.  
The Panel has assessed \$950.00 of the forum fees to Respondent Datek.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 100.00
<u>Forum Fees</u>	= \$ 950.00
Total Fees	= \$1050.00
<u>Less payments</u>	= \$ 500.00
Balance Due NASD Regulation, Inc.	= \$ 550.00

Respondent Datek be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$2200.00
<u>Forum Fees</u>	= \$ 950.00
Total Fees	= \$3650.00
<u>Less payments</u>	= \$3300.00
Balance Due NASD Regulation, Inc.	= \$ 350.00

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

**Concurring Arbitrators' Signatures**

/s/

\_\_\_\_\_  
John P. Cullem, Esq.  
Public Arbitrator, Presiding Chair

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

/s/

\_\_\_\_\_  
W. A. Westlake  
Public Arbitrator

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

/s/

\_\_\_\_\_  
Robert K. MacKenzie  
Industry Arbitrator

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

\_\_\_\_\_  
January 28, 2000  
Date of Service (For NASD office use only)

Concurring Arbitrators' Signatures

\_\_\_\_\_  
John P. Cullem, Esq.  
Public Arbitrator, Presiding Chair

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

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W. A. Westlake  
Public Arbitrator

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Signature Date

  
Robert K. MacKenzie  
Industry Arbitrator

1/28/00  
Signature Date

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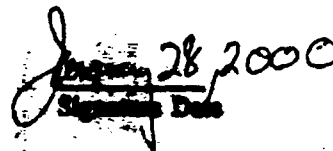
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John P. Callan, Esq.  
Public Arbitrator, Presiding Chair

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



W. A. Westlake  
Public Arbitrator

  
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