

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

CASE: 99-01044

Tom McElligott, claimant vs. E*Trade Securities, Inc., respondent.

ATTORNEYS:

Claimant, Tom McElligott, appeared Pro Se., Williamsburg, VA.

Respondent, E*Trade Securities, Inc, appeared through its Compliance Analyst, Bob Salvador, Palo Alto, CA.

DATE FILED: 03/08/99

CASE SUMMARY: Claimant alleged that respondent failed to liquidate or cancel claimant's order for shares of EARTHWEB when claimant did not have sufficient funds in claimant's account. In addition, respondent wrongfully increased claimant's margin account and failed to warn claimant in a timely fashion that claimant's account was in danger of being liquidated.

ARBITRATOR'S REPORT:

Findings: Claimant, Tom McElligott, is an experienced trader. He placed a "market order" for an extremely volatile stock, failed to keep track of his margin account, and failed to respond to margin calls in a timely manner.

Respondent, E*Trade, processed his order by checking to determine whether the available cash *in the Claimant's account would cover the previous day's closing price*. Satisfied that the available cash was sufficient the Respondent passed the order on for execution at market. The stock opened ten points higher than the previous day's closing price. The order was executed at the market price.

The Respondent fulfilled their responsibilities, The Claimant did not.

Facts as Presented: On Friday, November 13, 1998, before the market opened, the Claimant placed an electronic "market order" for a stock that the Claimant expected to increase in value from the previous day's closing price. The stock had begun trading on November 11 and during the two days prior to the Claimant placing his order the share price had ranged from \$31 to \$76. The Claimant's account contained sufficient cash to cover the purchase at the previous closing purchase price (\$67), plus a two-point increase.

Prior to the market opening for the day the Respondent tested the order to determine whether the Claimant had sufficient available cash to cover the purchase, and passed the order on for execution. The order was executed shortly after the market opened at twelve points higher than the previous closing price. Records submitted by the Respondent indicate they promptly sent an electronic message confirming the Claimant's purchase. On Saturday, November 14, 1998, the Respondent sent an electronic message indicating a margin call for an unstated amount of cash was being made. On Monday, November 16, 1998, E*Trade sent the Claimant a Mailgram requesting \$810 by settlement date November 18, 1998.

ARBITRATOR'S REPORT CONTINUED: Over the next several days the market value of the stock declined. On November 18, 1998 the Respondent sent another Mailgram requesting \$3,300 "additional margin" by 3:00 PM or the securities position would be liquidated. At 5:19PM on November 18, 1998 the Respondent sent the Claimant another electronic message indicating his account was deficient, and the margin call (for an unstated amount) would have to be satisfied by close of market November 19, 1998 or the securities would be liquidated.

At 9:37 AM on November 19, 1998 the Respondent placed an order to sell the securities. The securities were sold at loss to the Claimant of nearly \$12,500.

The Claimant indicates the November 16, 1998 Mailgram request for \$810 was followed up by a telephone call from a representative of the Respondent with the same request. The Claimant has also indicated he was aware that the stock price was declining and on November 18, 1998 after receiving the second Mailgram requesting \$3,300 he called the Respondent to ask for additional information.

Arguments: The Claimant contends: 1) The Respondent should not have executed an under-funded order for the reason that execution of the under-funded order increased his debt to purchase a volatile security; 2) Claimant was not aware the order had been executed until receiving the Mailgram on November 16, 1998; 3) Claimant was confused by the margin notices and did not receive help from E*Trade personnel.

Claimant wants his \$12,500 back.

The Respondent has argued that the policies and procedures they use to determine whether a customer has sufficient funds to cover margin requirements are designed to protect the Respondent from customers who are unwilling to pay for transactions that lose money. The Respondent has also indicated that the right to execute an under-funded order is solely at their discretion. The Respondent's customer agreement reads as follows:

"To process orders to purchase securities, E*Trade generally requires that the account contain "Available Funds" equal to or greater than the purchase price of the securities prior to trade date. Any order inadvertently accepted and/or executed without sufficient funds in the account will be subject, at E*Trade's discretion, to cancellation or liquidation. You are responsible for your orders, including any orders which exceed Available Funds in your account.

If full funds are not available in the Account and an order is processed your payment via wire or personal check, cashier's check or money order payable to E*Trade must be properly submitted to E*Trade to assure that such payments will be received on or prior to settlement date. If payment is not received by settlement date, or as market conditions warrant, your Account may be liquidated without prior notification. In the event your account is liquidated, you will be liable for any resulting losses and all associated costs incurred by E*Trade."

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ARBITRATOR'S REPORT CONTINUED: The Respondent argues the Claimant had ample time between November 16, 1998 and November 18, 1998 to demonstrate his willingness to meet the margin calls.

Claim Data

Award Data

Claim: \$12,500.00

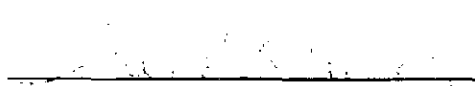
Award: \$.00

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) 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.

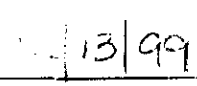
OTHER FEES: Pursuant to Rule 10333 of the Code, respondent has paid to NASD Regulation, Inc. the \$200.00 Member Surcharge previously invoiced.

AFFIRMATION

I, Jane C. Carney, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.



Jane C. Carney



Date of award