

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

William Allen Moss v. E*Trade

Case Number: 99-1309

Hearing Site: Omaha, Nebraska

REPRESENTATION OF PARTIES

Claimant, William Allen Moss ("Moss"), hereinafter referred to as "Claimant": Gail E. Boliver, Esq., Boliver Law Firm, Marshalltown, Iowa.

Respondent, E*Trade, hereinafter referred to as "Respondent": Paul S. Chan, Esq., Bird, Marella, Boxer & Wolpert, Los Angeles, California.

CASE INFORMATION

Statement of Claim filed on or about: March 16, 1999

Claimant signed the Uniform Submission Agreement: March 17, 1999

Statement of Answer and Counterclaim filed by Respondent on or about: June 9, 1999

Respondent signed the Uniform Submission Agreement: June 22, 1999

Claimant's Reply to Counterclaim filed on or about: November 4, 1999

CASE SUMMARY

Claimant asserted that due to the failure of Respondent's on-line trading system, on December 14, 1998, instead of covering 250 shares of Amazon as Claimant requested, an additional 250 shares of Amazon improperly was purchased on a short basis. Claimant stated that he never received an electronic confirmation of the transaction. According to Claimant, the December 14, 1998, execution should not have been allowed by a properly operating system, as it resulted in a margin account balance of 2% equity. Claimant asserted that Respondent breached its Customer Agreement by violating the margin requirements set by regulatory agencies.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted that it executed Claimant's December 14, 1998, order as placed - which was as a short sell order. Respondent further asserted that Claimant did not place an order to buy or cover at any time on December 14, 1998. Respondent alleged that Claimant ratified the order because Claimant received instantaneous e-mail confirmation of the short sell on December 14, 1998, and did not object to it. Respondent asserted a Counterclaim for the negative balance in Claimant's account.

RELIEF REQUESTED

Claimant requested compensatory damages of \$29,000.00, and other compensation the Panel may deem just and equitable.

Respondent requested dismissal of Claimant's Statement of Claim, compensatory damages of \$9,684.88, plus attorneys' fees, costs, forum fees, and any such further relief as the Arbitrators may deem just and proper

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:

- 1.) Claimant's claims are denied, each and all, with prejudice;
- 2.) Claimant is solely liable for and shall pay to Respondent the sum of \$9,684.88 in compensatory damages on Respondent's Counterclaim;
- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 4.) That any relief not specifically enumerated, is hereby denied with prejudice.

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 | = \$150.00 |
| Counterclaim | = \$500.00 |

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm 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 a party.

| | |
|-------------------------|--------------|
| Member surcharge | = \$ 600.00 |
| Pre-hearing process fee | = \$ 600.00 |
| Hearing process fee | = \$1,000.00 |

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 \$450.00 = \$ 450.00
Pre-hearing conference: December 17, 1999 1 session

One (1) Pre-hearing session with Panel x \$600.00 = \$ 600.00

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NASD REGULATION

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Pre-hearing conference: November 3, 1999 1 session

One (1) Hearing session x \$600.00 = \$ 600.00

Hearing Date: May 2, 1999 1 session

Total Forum Fees = \$1,650.00

The Panel has assessed \$825.00 of the forum fees to William Allen Moss.

The Panel has assessed \$825.00 of the forum fees to E*Trade Securities, Inc.

Fee Summary

Claimant, William Allen Moss, be and hereby is solely liable for:


| | |
|-----------------------------------|-------------|
| Initial Filing Fee | = \$ 150.00 |
| Forum Fees | = \$ 825.00 |
| Total Fees | = \$ 975.00 |
| Less payments | = \$ 520.00 |
| Balance Due NASD Regulation, Inc. | = \$ 455.00 |

Respondent, E*Trade, be and hereby is solely liable for:

| | |
|-----------------------------------|---------------|
| Counterclaim Filing Fee | = \$ 500.00 |
| Member Fees | = \$ 2,200.00 |
| Forum Fees | = \$ 825.00 |
| Total Fees | = \$ 3,525.00 |
| Less payments | = \$ 2,950.00 |
| Balance Due NASD Regulation, Inc. | = \$ 575.00 |

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures


Frederick B. Anderson, Esq.
Public Arbitrator, Presiding Chair

5/24/00
Signature Date

Wayne S. Rasmussen, Esq.
Public Arbitrator

Signature Date

Richard L. Mitchell
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

05/23/00 TUE 17:23 FAX

NASD REGULATION

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