

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

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In the Matter of the Arbitration Between

Name of Claimants

Subir K. and Suniti Bhattacharya

Case No. 99-01394

Name of Respondent

E\*Trade Securities, Incorporated

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**REPRESENTATION OF PARTIES**

Claimants appeared pro se.

For Respondent E\*Trade Securities, Incorporated: John M. McKoy, III, Esq. of Bird, Marella, Boxer & Wolpert, Los Angeles, CA.

**CASE INFORMATION**

Statement of Claim filed on or about March 23, 1999.

Claimants signed the Uniform Submission Agreement on March 1, 1999.

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

Respondent signed the Uniform Submission Agreement on June 23, 1999.

**CASE SUMMARY**

Claimants alleged the following: Respondent sold securities in Claimants' account to meet a margin deficit without first advising Claimants; Claimants requested that Respondent reverse the sale and Respondent refused; prior to this transaction, Respondent had requested additional collateral from Claimants which Claimants had always provided; Claimants were never advised by Respondent that the securities in their account could be sold to meet a margin deficit without their approval or without first being notified that such a sale was going to be made; and, as a result of Respondent selling the securities in Claimants' account, Claimants were damaged.

Unless specifically admitted in its Answer, Respondent denied the allegations in the Statement of Claim and alleged the following: Claimants are sophisticated investors who dedicated a relatively small portion of their portfolio to the aggressive strategy of buying volatile stocks on margin; in August 1998, Respondent issued a margin call which Claimants met; that between August 28, 1998 and September 4, 1998, the equity percentage of Claimants' margin account had fallen to approximately 23% resulting in a mandated margin

call; on September 4, 1998, Respondent exercised its contractual rights by selling off sufficient securities to restore the margin equity in Claimants' account to acceptable levels; at all times Respondent exercised its legal right, explicitly stipulated in Claimants' Customer Agreement, to liquidate certain positions in the margin account; Claimants are responsible for any damages or losses; Claimants assumed the risk of their margin trading strategy; Claimants were contributorily negligent; Claimants failed to take reasonable steps to mitigate their losses; and, Claimants explicitly agreed to the margin and liquidation provisions at issue here and thus are estopped from pursuing this action.

### **RELIEF REQUESTED**

Claimants requested compensatory damages of \$30,071.94 and punitive damages.

Respondent requested that the Statement of Claim be dismissed and that it be awarded costs and attorneys' fees.

### **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, the Arbitration Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are dismissed in their entirety.

Claimants' request for punitive damages is denied.

Any and all other 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	= \$ 175.00
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#### **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 is E\*Trade.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1000.00

**Forum Fees and Assessments**

The Arbitration 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 \$600.00	= \$ 600.00
Pre-hearing conference(s): Date October 1, 1999 1 session	
Two (2) Hearing sessions x \$600.00	= \$1200.00
Hearing Date(s): Date October 25, 1999 2 sessions	
Total Forum Fees	= \$1800.00

The Arbitration Panel has assessed \$900.00 of the forum fees to Claimants, jointly and severally.

The Arbitration Panel has assessed \$900.00 of the forum fees to Respondent.

**Fee Summary**

Claimants be and hereby are solely liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$1075.00
<u>Less payments</u>	= \$ 625.00
Balance Due NASD Regulation, Inc.	= \$ 450.00

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

Member Fees	= \$2400.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$3300.00
<u>Less payments</u>	= \$1600.00
Balance Due NASD Regulation, Inc.	= \$1700.00

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

**Concurring Arbitrators' Signatures**

/s/

\_\_\_\_\_  
E. Leonard Pacun  
Public Arbitrator, Presiding Chairperson

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

/s/

\_\_\_\_\_  
Burt R. Rose  
Public Arbitrator

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

/s/

\_\_\_\_\_  
Leah Sherman  
Industry Arbitrator

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

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December 8, 1999  
Date of Service (For NASD office use only)

E. Leonard Pacun 12/6/99  
E. Leonard Pacun Signature Date  
Public Arbitrator, Presiding Chairperson



Concurring Arbitrators' Signatures

E. Leonard Pacun  
Public Arbitrator, Presiding Chairperson

Signature Date

01  
Burt R. Rose

Burt R. Rose  
Public Arbitrator

12/3/99  
Signature Date

Leah Sherman  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

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E. Leonard Pacun  
Public Arbitrator, Presiding Chairperson

Signature Date

Burt R. Rose  
Public Arbitrator

Signature Date

  
Leah Sherman  
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12/6/99  
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