

**Award**  
**NASD Dispute Resolution, Inc.**

---

In the Matter of the Arbitration Between:

Dan and Roberta Llewellyn, (Claimants) vs. E\*Trade Securities, Inc., (Respondent)

Case Number: 99-01736

Hearing Site: New York, New York

---

**REPRESENTATION OF PARTIES**

Claimants, Dan and Roberta Llewellyn, hereinafter collectively referred to as "Claimants": C. Thomas Ludden, Esq., Lipson, Neilson, Jacobs & Cole, P.C., Troy, MI.

Respondent, E\*Trade Securities, Inc., hereinafter referred to as "Respondent": Mark T. Dooks, Esq. and Thomas V. Reichert, Esq., Bird, Marella, Boxer & Wolpert, Los Angeles, CA.

**CASE INFORMATION**

Statement of Claim filed on or about: April 6, 1999.

Reply to Counterclaim filed by Claimants on or about: August 30, 1999.

Claimants signed the Uniform Submission Agreement: March 31, 1999.

Statement of Answer and Counterclaim filed by Respondent on or about: July 6, 1999.

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

**CASE SUMMARY**

Claimants asserted the following causes of action: failure to provide accurate information about the price of Standard & Poors 500 Index options; inability to confirm a trade in a timely fashion; and failure to comply with duties.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Respondent's customer agreement, by which Claimants agreed to be bound, specifically warns customers that market data is provided by the various exchanges and that Respondent cannot warrant the accuracy of such data; Claimant specifically released Respondent from liability for claims like this one and agreed to indemnify Respondent against such claims; Respondent had no legal obligation to provide a confirmation to Claimants sooner than it did; and Claimants' market order to buy at the opening price was correctly executed.

In its Counterclaim, Respondent asserted the following cause of action: Claimants are liable for Respondent's attorneys' fees and costs pursuant to the terms of Claimants' customer agreement.

Unless specifically admitted in their Reply, Claimants denied the allegations made in the Counterclaim and asserted the following defenses: the provisions of the customer agreement relied upon in the Counterclaim do not apply under the clear terms of said agreement, under *the factual circumstances pled in this action, and under applicable law.*

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$76,000.00, plus consequential damages, interest, costs, attorneys' fees, and such other relief as is deemed just and equitable.

In its Answer and Counterclaim, Respondent requested that:

- a. The Statement of Claim be dismissed in its entirety;
- b. Respondent be awarded its attorneys' fees, costs, and forum fees in this matter; and
- c. Respondent be awarded such other and further relief as the Panel may deem just and proper.

In their Reply, Claimants requested that the Counterclaim be dismissed and that they be awarded all recoverable costs incurred to defend the Counterclaim.

### **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. Claimants' claims are hereby dismissed in their entirety.
2. Respondent's Counterclaim is hereby denied in its entirety.
3. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 225.00
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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, E\*Trade Securities, Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,000.00

#### **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 arbitrators, including a pre-hearing conference with the arbitrators, 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: April 14, 2000 1 session	

One (1) Pre-hearing session with Panel x \$1,000.00	= \$1,000.00
Pre-hearing conference: January 11, 2000 1 session	

Two (2) Hearing sessions x \$1,000.00	= \$2,000.00
---------------------------------------	--------------

Hearing Date: January 16, 2001 2 sessions	
Total Forum Fees	= \$3,450.00

---

The Panel has assessed all of the forum fees against Respondent.

**Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 975.00
<u>Refund Due Claimants</u>	= \$ 750.00

2. Respondent be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 500.00
Member Fees	= \$3,600.00
<u>Forum Fees</u>	= \$3,450.00
<u>Total Fees</u>	= \$7,550.00
<u>Less payments</u>	= \$5,100.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$2,450.00

All balances are due and payable to NASD Dispute Resolution, Inc.

01/24/2001 17:05 FAX

NASD REGULATION

0006/008

NASD Dispute Resolution, Inc.  
Arbitration No. 99-01736  
Award Page 5

---

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Toby Spitzer, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
*C Scott Bartlett Jr.*  
Craig Scott Bartlett, Jr.  
Public Arbitrator

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

\_\_\_\_\_  
James Daniel Lamke  
Industry Arbitrator

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

\_\_\_\_\_  
January 30, 2001  
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 99-01736  
Award Page 6

**Concurring Arbitrators' Signatures**

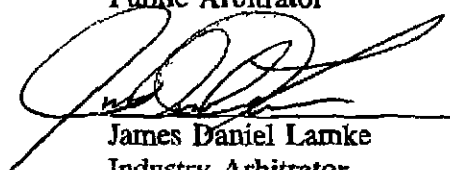
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Toby Spitzer, Esq  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Craig Scott Bartlett, Jr.  
Public Arbitrator

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

  
\_\_\_\_\_  
James Daniel Lamke  
Industry Arbitrator

1/26/01  
\_\_\_\_\_  
Signature Date

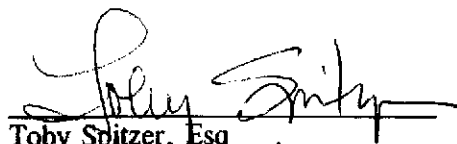
January 30, 2001  
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
Arbitration No. 99-01736  
Award Page 7

---

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.



Toby Spitzer, Esq.  
Public Arbitrator, Presiding Chair

---

Signature Date

---

Craig Scott Bartlett, Jr.  
Public Arbitrator

---

Signature Date

---

James Daniel Lamke  
Industry Arbitrator

---

Signature Date

January 30, 2001

Date of Service (For NASD office use only)