

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Steven G. Seif, DDS, (Claimant) vs. Discover Brokerage Direct, Inc., James Oerther, Jose Contin, and Tad Ravazzini (Respondents)

Case Number: 99-02085

Hearing Site: Albany, New York

REPRESENTATION OF PARTIES

Claimant, Steven G. Seif, DDS, hereinafter referred to as "Claimant", appeared *pro se*.

Respondents, Discover Brokerage Direct, Inc. ("Discover"), James Oerther ("Oerther"), Jose Contin ("Contin"), and Tad Ravazzini ("Ravazzini"), hereinafter collectively referred to as "Respondents": Robert T. Sullwood, Esq., Sullwood & Hughes, San Francisco, CA.

CASE INFORMATION

Statement of Claim filed on or about: May 5, 1999.

Claimant signed the Uniform Submission Agreement: May 3, 1999.

Statement of Answer filed by Respondents on or about: November 17, 1999.

Discover signed the Uniform Submission Agreement: October 12, 1999.

Oerther signed the Uniform Submission Agreement: November 17, 1999.

Contin signed the Uniform Submission Agreement: November 17, 1999.

Ravazzini signed the Uniform Submission Agreement: December 2, 1999.

CASE SUMMARY

Claimant asserted the following cause of action: failure to advise Claimant that a stop order to buy stock placed on-line was not valid.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to allege facts sufficient to constitute a cause of action; Claimant understood the risks of loss in the investments made in his account, and voluntarily directed and authorized said investments; Claimant failed to exercise reasonable care and diligence to protect himself from or to mitigate any damages that he may have sustained by reason of the matters alleged in the

Statement of Claim; at all times relevant hereto, Claimant knew or should have known of all material facts regarding the matters alleged in the Statement of Claim; and Claimant was negligent and such negligence was the cause in fact and proximate cause of any damages he sustained.

RELIEF REQUESTED

Claimant requested compensatory damages in the total amount of \$36,250.00, plus interest in the amount of \$787.00.

Respondents did not make any relief requests in their Statement of Answer.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Oerther, Contin, and Ravazzini were not present at the hearing in this matter, although their attorney, Robert T. Sullwood, Esq., was there representing them. Claimant made a motion to require their appearance as witnesses, arguing that they could explain why his electronic transaction was not carried out in a reasonable time. The Panel decided to proceed with the hearing without said Respondents present, but reserved the right to order their appearance if other facts demonstrated any need for their testimony or any prejudice to Claimant. The Panel heard all testimony and evidence, including tape recorded sessions of Claimant's conversations with these Respondents, and found no need for their testimony nor any prejudice to Claimant resulting from the fact that these Respondents were not present.

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 hereby denied in their entirety.
2. The Panel finds that Respondents did not unreasonably delay forwarding the Claimant's Order to the market maker on Friday, September 11, 1998.
3. The Respondents are not responsible for the fact that Claimant's Order was rejected by the market maker.

4. The Respondents are not responsible for the Claimant's subsequent decision not to cover his short position.
5. The Respondents are not liable for their refusal to agree to reimburse the Claimant for his losses.
6. 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	= \$ 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 that employed the associated person at the time of the events giving rise to the dispute. In this matter, Discover Brokerage Direct, Inc. is a party.

Member surcharge	= \$ 800.00
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 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 Panel x \$600.00	= \$ 600.00
Pre-hearing conference: June 14, 2000	1 session

Two (2) Hearing sessions x \$600.00	= \$1,200.00
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<u>Hearing Date</u> October 20, 2000	<u>2 sessions</u>
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Total Forum Fees	= \$1,800.00
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1. The Panel has assessed \$900.00 of the forum fees against Claimant.
2. The Panel has assessed \$900.00 of the forum fees against Discover.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$1,075.00
<u>Less payments</u>	= \$ 775.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 300.00

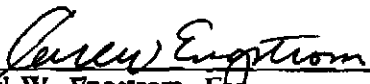
2. Discover be and hereby is solely liable for:

Member Fees	= \$2,400.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$3,300.00
<u>Less payments</u>	= \$2,200.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,100.00

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

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.



Carl W. Engstrom, Esq.
Public Arbitrator, Presiding Chair

11.30.00

Signature Date

Robert Kingsley Hull, Esq.
Public Arbitrator

Signature Date

James M. Beverley
Industry Arbitrator

Signature Date


Date of Service (For NASD office use only)

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11/30/00
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Industry Arbitrator

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