

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

CASE: 99-02253

Michael R. Hensley, claimant vs. E*Trade Securities, Inc., respondent.

ATTORNEYS:

For Claimant, Michael R. Hensley ("Claimant"), appeared Tracy Pride Stoneman, Esq. of the firm Tracy Pride Stoneman, P.C., Colorado Springs, CO.

For Respondent, E*Trade Securities ("Respondent"), appeared Bob Salvador, in-house counsel for E*Trade Securities, Palo Alto, CA.

DATE FILED: May 17, 1999

CASE SUMMARY: Claimant alleged that on November 30, 1998 he placed an on-line order that was later cancelled and confirmed, however, on December 1, 1998, Claimant was notified that his cancellation was reported in error. Claimant, further alleged that as a result of the errors, he incurred a loss in his account.

Claim Data

Claim: \$6,000.00
Atty Fees: Unspecified
Filing Fees: Unspecified
Interest: At 10% per annum accruing
after the breach.
Costs: Unspecified

Award Data

Award: \$1,145.00
Atty Fees: \$.00
Filing Fees: \$162.50
Interest: \$.00
Costs: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent is liable and shall pay to the claimant \$1,145.00. 2) All requests for attorney fees are denied. 3) All requests for interest are denied. 4) All other relief requests are denied. 5) The \$325.00 filing fee previously deposited with the National Association of Securities Dealers Regulation, Inc. by the Claimant, shall be retained by NASD Regulation, Inc. 6) Respondent is liable and shall pay Claimant \$162.50 as reimbursement for one half of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent E*Trade Securities, Inc., has paid to NASD Regulation, Inc. the \$300.00 Member Surcharge previously invoiced.

OTHER ISSUES: Prior to a decision on the merits, Respondent withdrew his counterclaim.

ARBITRATOR REPORT: The claimant entered two orders to purchase shares of stock on November 30, 1998 (200 shares of ONSL and 500 shares of NAVR at market). In both cases, Claimant did not receive an immediate verification that his orders had been executed. He then submitted requests to cancel those trade orders. The Claimant received electronic messages stating that his orders had been canceled. According to the letter of July 30, 1999 submitted by Bob Salvador, Senior Compliance Analyst for E*Trade, there was a fast market all day as declared by the market makers of both Onsale, Inc. and Navarre Corp. With regard to Onsale, E*Trade received information back from its market maker that the order had been canceled. With regard to Navarre Corp., the cancellation notice was received by E*Trade at 10:16 a.m. In both cases, the reported cancellation of the order issued by the E*Trade was in error. E*Trade relies upon Section 14 of the Customers Agreement which states in relevant part:

"Accordingly, you will be subject to late reports related to orders that were previously unreported to you or were reported to you as being expired, canceled, or executed."

As such, the Claimant is responsible for the executed trades. The Claimant alleges negligence by E*Trade. It was E*Trade which selected which market maker would be used to purchase the securities. Note the language used in both messages to Claimant, "Your order had been reinstated." It does not state that the Claimant's order was never canceled but "reinstated." This means the order was canceled. If E*Trade wants to protect itself, it should have specifically excluded liability or responsibility in such a situation. Simple agency law requires the customer to follow through on the trade.

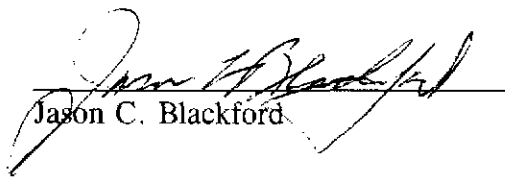
The duty is on the Claimant to mitigate his losses. He could have sold the shares on December 1, 1998. The closing prices of ONSL and NAVR were 54-1/4 and 13-5/8, respectively. This would have made the loss \$7,525 without costs of sale, which are estimated at \$200. The parties agree that E*Trade credited \$6,580 to Claimant's account. The loss sustained by Claimant is \$1,145.00 (\$7,525 + \$200 - \$6,580). No interest should be applied. Eleven Hundred Forty-Five Dollar (\$1,145.00) is awarded to claimant. No Punitive damages are appropriate. No attorney fees are appropriate.

Filing fees and costs are split equally among the two parties.

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AFFIRMATION

I, Jason C. Blackford, 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.


Jason C. Blackford

March 13, 2000

Date of award

RECIPIENTS:

Jason C. Blackford, Esq.