

**Award  
NASD Regulation, Inc.**

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**In the Matter of the Arbitration Between:**

Joshua Calloway, (Claimant) vs. Datek Online Brokerage Services Corp. (Respondent)

Case Number: 99-003006

Hearing Site Chicago, Illinois

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**REPRESENTATION OF PARTIES**

Claimant, Joshua Calloway (Mr. Calloway): Craig R. Shagin, Esq. and Dory L. Sater, Esq.  
Shagin & Anstine LLC, Harrisburg, Pennsylvania.

Respondent, Datek Online Brokerage Services Corp. (Datek): G Thomas Fleming III, Esq. and  
Trenton J. Hill, Esq. Jones, Bell, Abbott, Fleming and Fitzgerald, Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed on or about: June 28, 1999

Claimant signed Uniform Submission Agreement on: July 27, 1999

Answer filed by Respondent on: September 20, 1999

Respondent filed uniform Submission Agreement on: September 20, 1999

**CASE SUMMARY**

Claimant, asserted causes of action for breach of contract, breach of fiduciary duty, and unreasonable business conduct. The causes of action arise out of Respondent's liquidation of Claimant's account without a margin call.

Respondent denied the allegations made in the statement of the Claim and asserted a counterclaim for the negative balance after the account was liquidated.

**RELIEF REQUESTED**

**Claimant Requested:**

Rescission Damages	\$96,851.00
Lost Profits	\$17,500 +
Punitive Damages	Not specified
Attorney's Fees	Cost of this action
Other Costs	Cost of this action
Other Relief	As deemed appropriate by Panel

**Respondent Requested:**

Compensatory Damages	\$38,548
Interest	Not specified
Costs	Costs of this action
Attorney's fees	Costs of this action
Other Relief	As deemed appropriate by the Panel

**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 Joshua Calloway's claim is denied in its entirety.
2. Respondent Datek Online Brokerage Services Corporation's Counterclaim is granted.
3. Judgment in favor of Respondent, Datek Online Brokerage Service Corporation, and against Claimant, Joshua Calloway, individually, in the amount of \$24,420.78.
4. No award of interest on the judgment, and no punitive damages.
5. Each party is to bear his/its own attorneys fees, and costs associated with the arbitration.
6. Any and all 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	= \$300.00
Counterclaim filing fee	= \$1,000.00

**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 event giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

#### **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 arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: January 13, 2000 1 session	
Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
Hearing Date: May 31, 2000 2 sessions	
	<b><u>Total Forum Fees</u></b>
	= \$3,375.00

1. The Panel has assessed \$1,687.50 of the forum fees to Claimant
2. The Panel has assessed \$1,687.50 of the forum fees to Respondent.

#### **Fee Summary**

1. Claimant shall be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$1,687.50
Total Fees	= \$1,987.50
Less payments	= \$1,425.00
Balance Due NASD Regulation, Inc.	= \$ 562.50
2. Respondent shall be and hereby is solely liable for:

Counterclaim Filing Fee	= \$1,000.00
Member Fees	= \$4,600.00
Forum Fees	= \$1,687.50
Total Fees	= \$7,287.50
Less payments	= \$6,200.00
Balance Due NASD Regulation, Inc.	= \$1,087.50

All balances are due to NASD Regulation, Inc.

### Concurring Arbitrators' Signatures

/s/ Kevin Conway  
Kevin Conway  
Public Arbitrator, Presiding Chair

06/16/00  
Signature Date

/s/ David Duggan  
David Duggan  
Public Arbitrator

**Signature Date**

/s/ Scott Krantz  
Scott Krantz  
Industry Arbitrator

06/19/00  
Signature Date

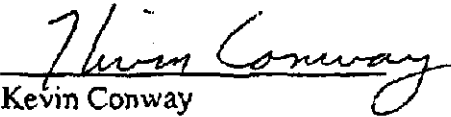
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Date of Service (For NASD office use only)

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David Duggan  
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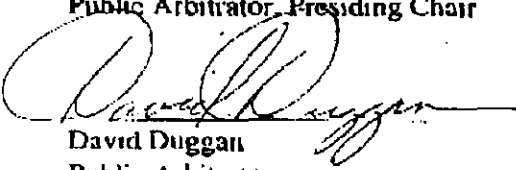
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