



**NASD Regulation, Inc.**

Office of Dispute Resolution  
125 Broad Street \* 36th Floor \* New York, NY 10004-2193 \* 212-858-4400 \* Fax 212-858-4389  
Satellite Office at: 1735 K Street \* 4th Floor \* NW \* Washington, DC 20006-1506 \* 202-728-8958 \* Fax 202-728-8952

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

CASE: 99-03034

Dianna J. Bein, claimant vs. E\*Trade Securities, Inc., respondent.

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**ATTORNEYS:**

Claimant Dianna J. Bein ("Claimant"), appeared Pro Se., Tucson, AZ.

For Respondent E\*Trade Securities, Inc. ("Respondent"), Bob Salvador, Compliance Analyst, E\*Trade Securities, Inc., Menlo Park, CA.

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DATE FILED: July 2, 1999

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**CASE SUMMARY:** Claimant alleged that Respondent erroneously froze out its account and sold its stocks, which resulted in a financial loss.

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**Claim Data**

Claim: \$3,000.00  
Punitive: \$2,000.00

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**Award Data**

Award: \$.00  
Punitive: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimant are dismissed in their entirety. 2) All requests for punitive damages are denied.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Regulation, Inc. the \$200.00 Member Surcharge previously invoiced.

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**OTHER ISSUES:** Claimants' request for a waiver of the \$175 claim filing fee by National Association of Securities Dealers Regulation, Inc., was granted by the arbitrator.

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**ARBITRATOR REPORT:** The Claimant, Ms. Bein, chiefly contends that E\*trade inappropriately closed her account, selling the securities therein at a loss to her. E\*Trade responds that Ms. Bein's trading actively exceeded her cash account and after notice failed to deposit the funds needed to maintain a positive cash balance.

Ms. Bein opened an on-line account with E\*Trade. Shortly thereafter, Ms. Bein began to actively trade in a manner that has now come to be called "day-trading." Ms. Bein suffered losses, and E\*Trade demanded that Ms. Bein deposit funds to cover them. She did so.

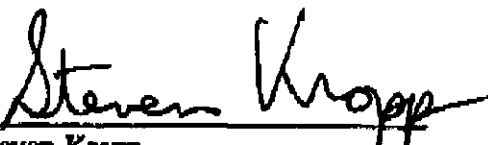
This occurred a second time and E\*Trade very shortly (within less than one hour) after providing notice on-line, cashed out her account resulting in a deficit in the account which E\*Trade still seeks to collect (but apparently does not assert before me).

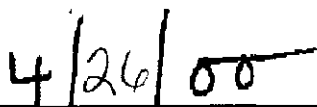
After carefully reviewing the complete record, I must agree with E\*Trade because the agreement signed by Ms. Bein authorized the precise action E\*Trade took. However, as much as I sympathize with Ms. Bein's plight especially the lengthy time Ms. Bein was compelled to wait on the phone (apparently at her expense) in an effort to resolve her problems with E\*Trade, that cannot be a basis for ignoring the agreement between them. Ms Bein knew (or should have known) she was obligated to maintain at all times (in stock or cash) a positive balance (akin to a checking account without overdraft protection). Ms. Bein did not comply with that obligation. Although I certainly agree that E\*Trade could have provided better customer service and certainly should have, as a matter of good customer relations, done a better job of communicating with Ms. Bein, I cannot waive her non-compliance for those reasons.

Ms. Bein's other claims for false advertising, misrepresentation in its business practices, and so forth, which apparently are now part of a class action lawsuit, I do not consider before me as part of this case. To the extent that Ms. Bein has such claims this Award does not rule upon them and she remains free to assert them as a member of that class, (or in any other forum) if she so chooses.

**AFFIRMATION**

I, Steven Kropp, 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.

  
Steven Kropp

  
Date of award