

**STIPULATED AWARD**  
**NASD Dispute Resolution, Inc.**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

**Jason Guerreso and Mario Guerreso**

**Name of Respondent**

**Datek Online Brokerage Services, Corp.**

**Case No. 99-04044**  
**Southfield, Michigan**

**Name of Counter-Claimant**

**Datek Online Brokerage Services, Corp.**

**Name of Counter-Respondents**

**Jason Guerreso and Mario Guerreso**

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**REPRESENTATION**

For Claimants and Counter-Respondents, Jason Guerreso and Mario Guerreso , Stuart H. Brickner, Esq. of Southfield, Michigan.

For Respondent and Counter-Claimant Datek Online Brokerage Services, Corp., G. Thomas Fleming III of Jones, Bell, Abbott, Fleming & Fitzgerald, Los Angeles, California.

**CASE INFORMATION**

Statement of Claim filed: October 4, 1999.

Claimant's Submission Agreement signed on August 27, 1999.

Statement of Answer and Counterclaim filed on January 24, 2000 by Datek Online Brokerage Services, Corp.

Respondent's Submission Agreement signed on December 14, 1999 by Jerome V. Duhovic on behalf of his firm.

### **HEARING INFORMATION**

Numerous telephonic pre-hearing conferences were held beginning with the initial pre-hearing conference on March 16, 2000. The arbitration hearing was held on November 15, 2001 in Southfield, Michigan.

### **CASE SUMMARY**

Claimants alleged that Respondent Datek Online Brokerage Services, Corp. unlawfully bought out their short position of 6325 shares of EFAX.COM on March 15, 1999. Claimants further alleged that they were able and willing to meet Datek's margin call had they received notice prior to Datek's liquidation of their position.

Respondent denied all the allegations in the Statement of Claim, and alleged that the liquidation of Claimants' margin account complied with all securities laws and regulations in that Claimants' account had violated the minimum margin maintenance requirements established by securities laws, regulations, and contract. Respondent further counterclaimed to collect the debit balance remaining in Claimants' account after it was liquidated.

### **RELIEF REQUESTED**

Claimant sought the return of their \$38,000 investment, in addition to \$25,000 to compensate Claimants for the money they would have made had their position in EFAX.COM closed on the date they filed their Statement of Claim.

Respondent requested that the Statement of Claim be dismissed, and that it be awarded its attorneys' fees and costs in responding to the Statement of Claim. On the Counterclaim, Counter-Claimant requested that it be awarded \$24,700.27, plus interest at the contractual rate from March 15, 1999 to the date of the award, costs, attorneys' fees, and such other relief as the arbitration panel deemed just and proper.

### **OTHER ISSUES CONSIDERED AND DECIDED**

None.

### **AWARD**

Having considered the evidence and arguments presented by the parties, and good cause appearing therefor, the undersigned Arbitrators render the following Award:

1. All claims by Jason Guerreso and Mario Guerreso against Respondent and Counter-Claimant Datek Online Brokerage Services LLC (formerly known as Datek Online Brokerage

Services, Corp.) are hereby dismissed with prejudice.

2. All claims by Respondent and Counter-Claimant against Claimant and Counter-Respondent Jason Guerreso are hereby dismissed with prejudice.
3. Claimant and Counter-Respondent Mario Guerreso is liable to Respondent and Counter-Claimant for the following:
  - (a) The principal sum of \$24,678.91; plus
  - (2) Interest on that sum in the amount of \$4,209.07, calculated at the rate of 6.75% as of April 19, 1999 to November 15, 2001 (\$4.56/day for 940 days); plus
  - (3) Interest on the principal sum of \$24,678.91 from November 15, 2001 until all sums due hereunder are paid in full.
4. That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;

#### **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	= \$750.00

#### **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(s) at the time of the events giving rise to the dispute. In this matter, the member firm is Datek Online Brokerage Services, Corp.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

January 8-9, 2001, adjournment by Claimants	= \$ 750.00
August 15-16, 2001, adjournment by Respondent	= \$ 750.00 (waived by Panel)

### **Forum Fees and Assessments**

The Arbitration 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 arbitrator(s), 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: September 8, 2000 1 session	
Three (3) Pre-hearing sessions with Panel x \$750.00	= \$2,250.00
Pre-hearing conferences: May 16, 2000 1 session	
January 8, 2001 1 session	
August 7, 2001 1 session	
One (1) Hearing session x \$750.00	= \$ 750.00
Hearing Date: November 15, 2001 1 session	
Total Forum Fees	= \$3,450.00

The Arbitration Panel has assessed \$1,725.00 of the forum fees to Jason Guerreso and Mario Guerreso.

The Arbitration Panel has assessed \$1,725.00 of the forum fees to Datek Online Brokerage Services, Corp.

### **Fee Summary**

Claimants, Jason Guerreso and Mario Guerreso, are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 750.00
Forum Fees	= \$1,725.00
Total Fees	= \$2,700.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,725.00

Respondent, Datek Online Brokerage Services, Corp. is liable for:

Counterclaim Filing Fee	= \$ 750.00
Member Fees	= \$3,100.00
Forum Fees	= \$1,725.00
Total Fees	= \$5,575.00

Less payments	= \$5,575.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Thomas Anthony Van Tiem, Sr. - Public, Presiding Chair  
Kenneth J. Safran, Esq. - Public Arbitrator  
Jay B. MacKenzie - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Walter H. Clements  
Walter H. Clements, Esq.

02/22/02  
Signature Date

/s/ William D. Keller  
William D. Keller

03/18/02  
Signature Date

/s/ Raymond W. Henney, Esq.  
Raymond W. Henney, Esq.

03/18/02  
Signature Date

03/18/02  
Date of Service (For NASD office use only)

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<u>Less payments</u>	<u>= \$5,575.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

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**ARBITRATION PANEL**

Thomas Anthony Van Tiem, Sr. - Public, Presiding Chair  
Kenneth J. Safran, Esq. - Public Arbitrator  
Jay B. MacKenzie - Non-Public Arbitrator

Concurring Arbitrators:

  
Walter H. Clements, Esq.

2-22-02  
Signature Date

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William D. Keller

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Signature Date

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Raymond W. Henney, Esq.

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

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**ARBITRATION PANEL**

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Kenneth J. Safran, Esq. - Public Arbitrator  
Jay B. MacKenzie - Non-Public Arbitrator

Concurring Arbitrators:

Walter H. Clements, Esq.

Signature Date

William D. Keller

3/13/02

William D. Keller

Signature Date

Raymond W. Henney, Esq.

Signature Date

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NASD REGULATION

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Arbitration No. 98-04044  
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<u>Less payments</u>	= \$5,575.00
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Signature Date