

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Penson Financial Services, Inc., Claimant v. Toyama Enterprise, Inc., Respondent

Case Number: 99-04051

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

Thomas W. Craddock, Esq.
Wm. David Simmons, Esq.
McGuire, Craddock, Strother & Hale, P.C.
Dallas, Texas

For Respondent:

Did Not Appear

CASE INFORMATION

Statement of Claim filed: September 3, 1999

Claimant's Uniform Submission Agreement signed: August 30, 1999

CASE SUMMARY

Claimant alleged breach of contract in connection with a series of margin trades executed by Respondent which resulted in a debit balance in Respondent's account.

Respondent did not file an answer.

RELIEF REQUESTED

Claimant requested \$80,073.18 in compensatory damages. Claimant also requested interest, costs, and attorney's fees.

Respondent did not file an answer.

OTHER ISSUES CONSIDERED AND DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators determined that Respondent Toyama Enterprise, Inc. was properly served with the Statement of Claim, and that arbitration of the matter would proceed in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent Toyama Enterprise, Inc. did not file with the NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and customer account agreement and is bound by the determination of the Panel on all issues submitted.

On June 23, 2000, during the telephonic pre-hearing conference, the Arbitration Panel granted Claimant's Motion to Preclude. Respondent was barred from presenting any arguments or defenses at the arbitration hearing. The Panel, on the motion of the Claimant, set July 6, 2000 for a telephonic evidentiary hearing in lieu of the in-person hearing set for October 11-13, 2000.

The Claimant 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent is liable to and shall pay Claimant the sum of \$86,284.77 in compensatory damages and accrued interest. Interest shall accrue at the rate of 10% per annum from July 1, 2000 until the award is paid in full.
- 2) Respondent is liable to and shall pay Claimant the sum of \$9,500.00 in attorney's fees pursuant to the terms of the customer account agreement.
- 3) Each party shall bear its own costs.
- 4) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. has received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 1,000.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the event of the dispute. Accordingly, the member firm Penson Financial Services, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 1,500.00</u>
Total Member Fees	= \$ 3,100.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

Two Pre-hearing conference sessions with the Panel @ \$750.00/session	= \$ 1,500.00
Pre-hearing conferences: June 1, 2000	1 session
June 23, 2000	1 session
One Hearing Session @ \$750.00/session	= \$ 750.00
<u>Hearing: July 6, 2000</u>	<u>1 session</u>
Total Forum Fees	= \$ 2,250.00

The Panel assessed \$2,250.00 of the forum fees to Respondent Toyama Enterprise, Inc.

Fee Summary

1. Claimant, Penson Financial Services, Inc., is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	<u>= \$ 3,100.00</u>
Total Fees	= \$ 4,100.00
<u>Less payments</u>	<u>= \$(4,850.00)</u>
Refund Due Claimant	= \$ 750.00

2. Respondent, Toyama Enterprise, Inc., is charged with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 2,250.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,250.00

All balances are payable to NASD Dispute Resolution, Inc. and are due within 30 days of the Award's date of service.

Concurring Arbitrators' Signatures


Terry A. O'Connell
Chair, Public Arbitrator

7-19-00
Signature Date

G. Timothy Haight, DBA
Public Arbitrator

Signature Date

Robert A. Weisman
Non-Public Arbitrator


Signature Date

7/20/00
Date of Service


Concurring Arbitrators' Signatures

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Chair, Public Arbitrator

Signature Date



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Non-Public Arbitrator

Signature Date

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