

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

David H. Werle, Custodian for Blake Werle and Derek Werle, Claimant vs. E\*Trade Securities, Inc., Respondent.

Case Number: 99-04507

Hearing Site: San Francisco, CA

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**REPRESENTATION OF PARTIES**

Claimant, David H. Werle, Custodian for Blake Werle and Derek Werle, hereinafter referred to as "Claimant": Jeffrey M. Jones, Esq., Law Office of Jeffrey M. Jones, P.C., Pioneer Telegraph Building, 1015 Second Street, Old Sacramento, CA 95814.

Respondent, E\*Trade Securities, Inc., hereinafter referred to as "Respondent": Vernita Fairley, Esq., Bird, Marella, Boxer & Wolpert, 1875 Century Park East, 23<sup>rd</sup> Floor, Los Angeles, CA 90067.

**CASE INFORMATION**

Statement of Claim filed on or about: December 1, 1999

Claimant signed the Uniform Submission Agreement: September 29, 1999

Statement of Answer filed by Respondent on or about: January 25, 2000

Respondent signed the Uniform Submission Agreement: March 8, 2000

Claimant amended his request for relief on or about: March 7, 2000

Amended Statement of Answer filed by Respondent on or about: May 26, 2000

**CASE SUMMARY**

Claimant asserted several allegations relating to reported operational errors committed by Respondent, including an allegation that Respondent sold shares of restricted stock in the Blake Werle and Derek Werle custodial accounts without first obtaining a copy of the required signed documents. Claimant alleged that it resulted in his inadvertent oversell of stock in the accounts and, that Respondent failed to discover the error in a timely fashion leading Claimant to incur a debit when the stock was repurchased at a higher rate. Claimant contends that he has fully satisfied any debit owed to Respondent.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant, and not the Respondent, is responsible for the debit balance in the custodial accounts and, Claimant failed to mitigate his alleged damages. Respondent filed a counterclaim to collect the alleged outstanding debit balance owed in the custodial accounts.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$10,355.12 for the overpayment in the Blake Werle custodial account.
Compensatory Damages	\$10,743.94 for the overpayment in the Derek Werle custodial account.

Respondent requested:

Compensatory Damages	\$30,823.55
Interest	Unspecified
Other Costs	Forum fees.
Other Monetary/Non-Monetary Relief:	As the Arbitrator deems just and proper.

### **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 Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are denied in their entirety.

Claimant is liable for and shall pay Respondent \$5,000 on the Respondent's counterclaim.

The forum fees shall be split equally between the parties.

All other claims are denied in their entirety.

### **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	= \$ 175
Counterclaim filing fee	= \$1000

**Member Fees**

Member fees are assessed to each member firm that is a party in these. In this matter, the member firm is a party.

Member surcharge	= \$ 800
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1000

**Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450	= \$450
Pre-hearing conference: May 11, 2000 1 session	
Two (2) Hearing sessions x \$450	= \$900
Hearing Date: July 20, 2000 2 sessions	
Total Forum Fees	= \$1350

1. The Arbitrator has assessed \$675 of the forum fees to the Claimant.
2. The Arbitrator has assessed \$675 of the forum fees to the Respondent.

**Fee Summary**

Claimant is hereby solely liable for:

Initial Filing Fee	= \$ 175
<u>Forum Fees</u>	= \$ 675
Total Fees	= \$ 850
<u>Less payments</u>	= \$ 625
Balance Due NASD Regulation, Inc.	= \$ 225

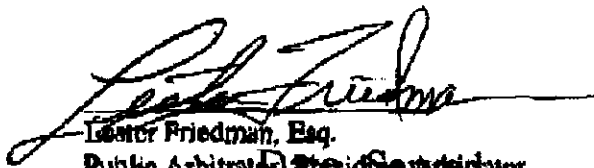
Respondent is hereby solely liable for:

Counterclaim Filing Fee	= \$ 1000
Member Fees	= \$ 2400
<u>Forum Fees</u>	= \$ 675
Total Fees	= \$ 4075
<u>Less payments</u>	= \$ 2250
Balance Due NASD Regulation, Inc.	= \$ 1825

All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

NASD Regulation, Inc. Office of Dispute Resolution  
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Arbitrator's Signature

  
Lester Friedman, Esq.  
Public Arbitrator

JUL 31 2000

7-28-2000  
Signature Date

Date of Service (For NASD office use only)