

**IN ARBITRATION  
UNDER CHAPTER XVIII OF THE RULES  
OF THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED**

_____ )	
IN THE MATTER OF )	
Mark A. Nosich, )	
Claimant, )	DECISION
and )	File No. 99NM007
E*TRADE Securities, Inc. )	
Respondent. )	
_____ )	

**Representation**

For Claimant:	Pro se
For Respondent:	Bob Salvador, Senior Compliance Analyst, E*TRADE, Inc.

**Pleadings**

Statement of Claim and Submission Agreement, filed on or about:	April 19, 1999
Answer, filed on or about:	June 2, 1999
Respondent's Submission Agreement, filed on or about:	July 19, 1999

**Hearing**

Pursuant to Chicago Board Options Exchange ("Exchange") Rule 18.4, Simplified Arbitration, the claim was decided by a single public arbitrator knowledgeable in the securities industry solely upon the pleadings and evidence filed by the parties. The named parties had full opportunity to present written arguments and evidence for consideration by the agreed upon public arbitrator.

**Summary of Issues**

Mark A. Nosich ("Claimant") alleges that he was unable to sell his call options, despite all attempt to do so, due to a widely publicized "software glitch" at E\*TRADE Securities, Inc. ("Respondent"). Claimant further alleges that due to the technical problems beyond his control, he was forced to sit back and watch while the value of the options decreased to zero. Claimant states that on February 4, 1999 at 8:40 a.m. CST he needed to sell the following call option positions because of a severe downturn in the market: 3 February CYQBC at 5, 3 February QWABL at 4 7/8 and 3 February TBS at 2 5/8. Claimant asserts that he was not able to place a trade through Respondent until approximately 11 a.m. CST, at which time the positions had deteriorated so badly that he would not have been able to pay the commissions if he had sold the position. Claimant states that the options expired worthless on February 19, 1999. Claimant requests an award against Respondent in the amount of \$4,349.50.

Respondent states that E\*TRADE was accessible to customers through eight separate gateways and asserts that it is the customer's responsibility to attempt to access their account through other gateways in situations where one gateway is unavailable. Respondent further alleges that Claimant could have accessed his E\*TRADE account through direct modem and could have entered his orders without delay. Respondent asserts that Claimant made no effort to mitigate any losses. Respondent requests that the claim be denied.

### **Award\***

After due deliberation and consideration of the pleadings, arguments, documentary evidence, and other submissions of the parties, the undersigned arbitrator, in full and final settlement of all issues in controversy, awards as follows: No Award is rendered.

### **Forum Fees**

Pursuant to Exchange Rule 18.33, the Arbitrator assesses forum fees in the total amount of \$125.00 (\$50.00 filing fee + \$75.00 hearing session fee) as follows:

1. Respondent is liable for and shall pay to the Exchange the sum of \$125.00.
2. Exchange shall refund to Claimant the non-refundable filing fee in the amount of \$50.00 and the hearing session deposit in the amount of \$75.00 previously submitted by Claimant.

/s/ Samuel B. Garber  
Samuel B. Garber, Public Arbitrator

10/22/1999  
Date

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\* Pursuant to CBOE Rule 18.31, all monetary awards shall be paid within thirty (30) days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction.