

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Sid Kotha, (Claimant) vs. Discover Brokerage, (Respondent).

Case Number: 99-01579

Hearina Site: Houston, Texas

REPRESENTATION OF PARTIES

Claimant, Sid Kotha, hereinafter referred to as "Claimant": William S. Shepherd, Esq.. William S. Shepherd & Associates, PC, Houston, Texas.

Respondent, Discover Brokerage, hereinafter referred to as "Respondent": Robert T. Sullwood. Esq.. Sullwood & Hughes, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: April 5, 1999

Amended Statement of Claim filed on or about: September 21, 1999

Claimant signed the Uniform Submission Agreement: June 2, 1999

Statement of Answer filed by Respondent on or about: August 26, 1999

Respondent signed the Uniform Submission Agreement: August 26, 1999

CASE SUMMARY

Claimant submitted the following case summary:

Mr. Kotha, not unlike many people these days, makes his living day trading his account. Mr. Kotha chose to do business with Respondents for one reason only, they represented to him they would rapidly execute orders and confirmations. On January 12, 1999, Mr. Kotha placed ~~two~~ separate limit orders to buy stock. When, respectively, he did not receive confirmation on either stock, he canceled both orders and received cancellation of such requests. However after the close of the market on January 13th, Respondent delivered another set of confirmations, via Internet,

stating that the original orders were executed. When Mr. Kotha accessed his Internet account that evening he was shocked to see the canceled shares in his account, however later that evening he noted that the shares were no longer in the account. On the morning of the 14th they were back again. Assuming a computer glitch or clerical error, Mr. Kotha immediately contacted Respondents who told him unequivocally that the stock was in his account and nothing could be done. After several fruitless phone calls Mr. Kotha realized something had to be done because the stock purchased had dropped in price by approximately twenty points. To mitigate damages, Mr. Kotha sold the stock hoping to resolve the issue with Respondents rather than doing nothing and allowing damages to increase. Respondent chose to not resolve the issue, thereby causing Mr. Kotha to sustain losses of approximately twenty thousand dollars (\$20,000) exclusive of interest, costs, attorneys fees and treble or punitive damages.

Respondent did not file a case summary. Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: there is no rule of law or regulation that would impose liability on Respondent for a late report of execution; late reports are a known possibility in investing and, by maintaining a Discover Brokerage account, Claimant agreed to accept this risk; and according to industry standards, a report can come back to the brokerage firm from the market as late as three days after the trade.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$20,000
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Respondent requested:

Dismissal of Claim	
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	unspecified

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 decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Discover Brokerage, is liable for and shall pay to Claimant, Sid Kotha, \$16,376 in compensatory damages;
2. Respondent, Discover Brokerage, is liable for and shall pay to Claimant, Sid Kotha, \$5,000 in attorneys' fees. In deciding to award attorneys' fees, the Arbitrator considered the pleadings, the testimony and the evidence presented by the parties as well as the stipulation between the parties; and
3. Any and all relief not specifically addressed herein is denied.

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 = \$125

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Discover Brokerage.

Member surcharge = \$400

Forum Fees and Assessments

The 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 = \$450
Pre-hearing conference: January 7, 2000 1 session

Two (2) Hearing sessions x \$450 = \$900
Hearing Date: April 3, 2000 2 sessions

Total Forum Fees = \$1,350

1. The Panel has assessed \$675 of the forum fees to S i Kothr.
2. The Panel has assessed \$675 of the forum fees to Discover Brokerage.

Fee Summary

1. Claimant, Sid Kotha, be and hereby b solely liable fur	
Initial Filing Fee	= 5125
Forum Fees	= \$675
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Total Fees	= \$800
Less payments	= \$575
Balance Due NASD Regulation, Inc.	= \$225
2. Respondent, Discover Brokerage, be and hereby is solely liable for:	
Member Fees	= \$400
Forum Fees	= \$675
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Total Fees	= \$1,075
Less payments	= \$1,000
Balance Due NASD Regulation, Inc.	= \$75

All balances are due to NASD Regulation, Inc.

Concurring Arbitrator's Signature


William S. Hopkins
Public Arbitrator, Presiding Chair

4/14/00
Signature Date

Date of Service (For NASD office use only)