

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

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In the Matter of the Arbitration Between:

Carson X H Liang, Claimant vs. Discover Brokerage Direct, Inc., Respondent.

Case Number: 99-01715

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

Claimant, Carson X H Liang ("Liang"), hereinafter referred to as "Claimant": N. David Lopez, Esq., Chao & Lopez, San Francisco, California

Respondent, Discover Brokerage Direct, Inc. ("Discover Brokerage"), hereinafter referred to as "Respondent": Robert T. Sullwold, Esq., Sullwold & Hughes, San Francisco, California

**CASE INFORMATION**

Statement of Claim filed on or about: April 9, 1999

Answer to Counterclaim filed on or about: July 23, 1999

Claimant, Carson X H Liang, signed the Uniform Submission Agreement: April 9, 1999

Answer and Counterclaim by Respondent, Discover Brokerage Direct, Inc., filed on or about June 9, 1999

Respondent, Discover Brokerage Direct, Inc., signed the Uniform Submission Agreement: May 4, 1999

**CASE SUMMARY**

Claimant alleged that Respondent sold shares of Amati Communications Corp. ("Amati") stock from Claimant's account without his authorization.

Respondent denied each and every allegation of wrongdoing contained in Claimant's Claim. Respondent alleged that Claimant placed an order to buy stock without having sufficient equity in his account to meet the initial margin requirements; when the price of the stock went down and Claimant failed to deposit any additional funds or securities into his account, Respondent made an orderly liquidation of the under-margined position; this was its right under its contract with Claimant and in accordance with securities industry standards; the result was a debit balance in Claimant's account for which he was contractually liable; rather than pay his debt, Claimant demanded that Respondent "refund all of the money he has deposited with your company for investment purposes and money earned from stock trading"; when Respondent refused, Claimant unsuccessfully complained to the NASD and the SEC and demanded, in addition to the "refund," compensation for the profits he claimed he would have made had he been allowed to buy the stock without paying for it. Respondent also asserted affirmative defenses.

For its Counterclaim against Claimant, Respondent alleged that as a result of the margin liquidations necessitated by Claimant's failure to pay for his purchase of 30,000 shares of Amati stock, a debit balance arose in Claimant's account and further alleged that Claimant has failed to pay the debit balance.

Claimant denied the allegations contained in Respondent's Counterclaim and denied any liability to Respondent.

### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$711,000.00.

With respect to Respondent's Counterclaim, Claimant requested:

1. The Statement of Counterclaim be dismissed;
2. Respondent be solely responsible for the loss in selling thirty thousand shares of Amati; and
3. That Respondent pay Claimant damages in the amount of \$711,000.00.

Respondent requested:

1. That Claimant's Statement of Claim be dismissed;
2. Damages on its Counterclaim in the amount of \$117,371.29, plus interest accrued on that sum from June 15, 1999 through the date of award; and
3. Costs, including reasonable attorneys' fees.

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

1. All claims by Claimant Liang are dismissed.
2. All claims by Respondent Discover Brokerage are dismissed.
3. The parties shall each bear their respective costs including attorney's fees.

### **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	= \$ 375.00
Counterclaim filing fee	= \$1,000.00

#### **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 is a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

#### **Adjournment Fees**

Adjournments requested during these proceedings:

March 8-10, 2000, adjournment by Claimant, Liang	= \$1,200.00
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#### **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. Forum fees associated with these proceedings are based on the hearing session deposit associated with the respective party's claim or counterclaim.

Pre-hearing conferences:	November 5, 1999	1 session
	March 2, 2000	1 session
Hearing sessions:	May 11, 2000	1 session
	May 12, 2000	1 session

Claimant's Assessment:

Two (2) Pre-hearing sessions with Panel x \$1,200.00	= \$2,400.00
One (1) Hearing session x \$1,200.00	= \$1,200.00
Total Forum Fees	= \$3,600.00

The Panel determined that Claimant shall be assessed \$1,800.00 in forum fees based on Claimant's hearing session deposit and hearing sessions held.

**Respondent's Assessment:**

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$2,250.00
One (1) Hearing session x \$1,125.00	= \$1,125.00
Total Forum Fees	= \$3,375.00

The Panel determined that Respondent shall be assessed \$1,687.50 in forum fees based on Respondent's hearing session deposit and hearing sessions held.

The Panel waived the forum fees in connection with the hearing session held on May 11, 2000.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

**Fee Summary**

1. Claimant, be and hereby is solely liable for:

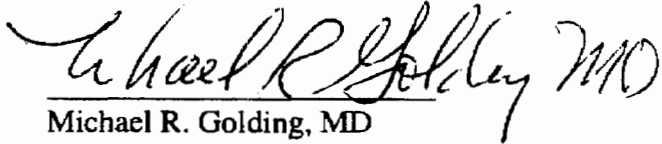
Initial Filing Fee	= \$ 375.00
Member Fees	= \$ 0.00
Adjournment Fee	= \$1,200.00
Forum Fees	= \$1,800.00
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$3,375.00
<u>Less payments</u>	= \$2,775.00
Balance Due NASD Regulation, Inc.	= \$ 600.00

2. Respondent, be and hereby is solely liable for:

Filing Fee	= \$1,000.00
Member Fees	= \$6,100.00
Adjournment Fee	= \$ 0.00
Forum Fees	= \$1,687.50
<u>Administrative Costs</u>	= \$ 0.00
Total Fees	= \$8,787.50
<u>Less payments</u>	= \$8,225.00
Balance Due NASD Regulation, Inc.	= \$ 562.50

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

**Concurring Arbitrators' Signatures**



Michael R. Golding, MD  
Public Arbitrator, Presiding Chair

26 MAY 2000  
Signature Date

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Terry Lloyd, CPA, CFA  
Public Arbitrator

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


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Dunn Krahl  
Industry Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

Date Served:


JUN 5 0 2000



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Michael R. Golding, MD  
Public Arbitrator, Presiding Chair

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

  
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Terry Lloyd, CPA, CFA  
Public Arbitrator

5/20/00  
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Signature Date

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Dunn Krahl  
Industry Arbitrator

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Signature Date

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Date of Service (For NASD office use only)

Date Served:

**JUN 5 0 2000**

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Michael R. Golding, MD  
Public Arbitrator, Presiding Chair

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Signature Date

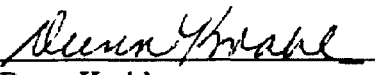
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Terry Lloyd, CPA, CFA  
Public Arbitrator

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Signature Date

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Dunn Krahl  
Industry Arbitrator

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5/25/00  
Signature Date

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Date of Service (For NASD office use only)

**Date Served:**  
**JUN 5 0 2000**