

**AWARD**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Michael S. Evans  
and

00-3791

Name of Respondent

Charles Schwab & Company, Inc.

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**REPRESENTATION OF PARTIES**

Michael S. Evans ("**Claimant**") was represented by Ross Foster, Esq., Law Offices of Ross T. Foster located in Fort Worth, Texas.

Charles Schwab ("**Respondent**") was represented by Robb Crowe, Esq. of Charles Schwab & Co. Inc., located in San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 30, 2000. Submission Agreement of Claimant Michael S. Evans was signed on August 8, 2000.

Statement of Answer was filed by Respondent Charles Schwab & Company, Inc. on or about November 24, 2000. Jane Weston signed submission Agreement of Respondent on November 22, 2000.

**CASE SUMMARY**

Claimant alleged that Claimant established an on-line trading account with Respondent. Claimant seeks to recover damages from mistakes and problems allegedly caused by Respondent in connection with Claimant's writing call options on Kana Communications Inc. stock on May 17 and 18, 2001. Claimant alleges causes of action including: Breach of Fiduciary Duty; Fraud in Stock Transactions; Deceptive Trade Practices Act; Fraud; Misrepresentation; Conversion.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that the only mistake in Claimant's account was made with regard to what the options represented. Therefore, Respondent is not at fault and Claimant is not entitled to any damages.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$82,095.64, interest, attorney's fees, expert fees and costs.

Respondent requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorney's fees. Respondent asserted affirmative defenses including the following: affirmative defenses of mistake, comparative negligence and estoppel.

### **OTHER ISSUES CONSIDERED & 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. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. That any and all requests for relief are hereby dismissed and denied in their entirety;
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice;
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$225.00

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Charles Schwab & Company, Inc.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$1,500.00

### **Forum Fees and Assessments**

The Arbitration 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 Panel	x \$750.00	= \$750.00
Pre-hearing conference:	January 25, 2001      1 session	
Four (4) Hearing sessions	x \$750.00	= \$3,000.00
Hearing Date(s):	September 11, 2001      2 sessions	
	<u>September 12, 2001</u> <u>2 sessions</u>	
Total Forum Fees		= \$3,750.00

The Arbitration Panel has assessed \$1875 of the forum fees to Claimant Michael Evans.

The Arbitration Panel has assessed \$1875 of the forum fees to Respondent Charles Schwab & Company, Inc.

### **Fee Summary**

Claimant, Michael Evans, shall be and hereby is liable for:

Initial Filing Fee	= \$225.00
<u>Forum Fees</u>	= \$1,875.00
Total Fees	= \$2,100.00
<u>Less payments</u>	= \$975.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,125.00

Respondent, Charles Schwab & Company, Inc., shall be and hereby is liable for:

Member Fees	= \$3,100.00
<u>Forum Fees</u>	= \$1,875.00
Total Fees	= \$4,975.00
<u>Less payments</u>	= \$2,350.00
Balance Due NASD Dispute Resolution, Inc.	= \$2,625.00

**All balances are due to NASD Dispute Resolution, Inc.**

**ARBITRATION PANEL**

Kenneth E. Johns - Public/Non-Public, Presiding Chair  
Dale A. Hearn - Non-Public Arbitrator  
Barbara L. Edin - Public Arbitrator

Concurring Arbitrators:

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Kenneth E. Johns  
Public Arbitrator, Presiding Chair

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Signature Date

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Barbara L. Edin  
Public Arbitrator

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Signature Date

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Dale A. Hearn  
Non-Public Arbitrator

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Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 00-03791  
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All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Kenneth E. Johns - Public/Non-Public, Presiding Chair

Dale A. Hearn - Non-Public Arbitrator

Barbara L. Edin - Public Arbitrator

Concurring Arbitrator:

  
Kenneth E. Johns  
Public Arbitrator, Presiding Chair

10/31/01  
Signature Date

Barbara L. Edin  
Public Arbitrator

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

Dale A. Hearn  
Non-Public Arbitrator

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

NASD Dispute Resolution, Inc.  
Arbitration No. 00-03791  
Award Page 4 of 4

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Dale A. Hearn - Non-Public Arbitrator  
Barbara L. Edin - Public Arbitrator

**Concurring Arbitrators:**

Kenneth E. Johns  
Public Arbitrator, Presiding Chair

Barbara L. Edin  
Public Arbitrator

Dale A. Hearn  
Non-Public Arbitrator

Signature Date

10/19/01  
Signature Date

Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 00-03791  
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ARBITRATION PANEL

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Concurring Arbitrators:

Kenneth E. Johns  
Public Arbitrator, Presiding Chair

Signature Date

Barbara L. Edin  
Public Arbitrator

Signature Date

*Dale A. Hearn*  
Dale A. Hearn  
Non-Public Arbitrator

*10-19-01*  
Signature Date