

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:
Tiamat, Inc., Claimant v. Charles Schwab & Co., Inc., Respondent

Case Number: 00-05316

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

George C. Montgomery, Esq.
Greenspan, Glasser & Rosson
Culver City, California

For Respondent:

Curt H. Mueller, Esq.
Charles Schwab & Co., Inc.
San Francisco, California

CASE INFORMATION

Statement of Claim filed: November 28, 2000

Claimant's Uniform Submission Agreement signed: November 28, 2000

Statement of Answer and Counterclaim filed by Respondent Charles Schwab & Co., Inc.:
January 24, 2001

Respondent's Uniform Submission Agreement signed: January 23, 2001

CASE SUMMARY

Claimant alleged breach of fiduciary duty, breach of contract, and violation of SEC, NASD, and NYSE rules and regulations. Allegations arose out of the purchase and/or sale of securities in Rite Aid, on margin.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested up to \$100,000.00 in compensatory damages, punitive damages, interest, attorney's fees and costs of arbitration.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety.

In its Counterclaim, Charles Schwab & Co., Inc. requested a \$1,611.64 payment for a debit balance on account, interest, and costs of arbitration.

OTHER ISSUES CONSIDERED AND DECIDED

On October 31, 2001, the parties and the panel convened a telephonic pre-hearing conference for oral argument on Respondent's Motion to Dismiss. The Panel took the matter under advisement, deliberated, and granted Respondent's Motion.

The parties 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, and the oral argument presented at the pre-hearing, Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims in Claimant's Statement of Claim are dismissed with prejudice.
- 2) All claims in Respondent's Counterclaim are dismissed with prejudice.
- 3) Parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

| | |
|--|-------------|
| Initial claim filing fee | = \$ 225.00 |
| Charles Schwab Counterclaim filing fee | = \$ 300.00 |

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Charles Schwab & Co Inc. is a party and the following fees are assessed:

| | |
|----------------------------|----------------------|
| Member Surcharge | = \$ 1,000.00 |
| Pre-Hearing Process Fee | = \$ 600.00 |
| <u>Hearing Process Fee</u> | <u>= \$ 1,500.00</u> |
| Total Member Fees | = \$ 3,100.00 |

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or Panel. The following fees are assessed:

| | |
|---|---------------|
| 2 Pre-hearing conference sessions with the Panel @ \$750.00/session | = \$ 1,500.00 |
| Pre-hearing conferences: September 17, 2001 | 1 session |
| October 31, 2001 | 1 session |

| | |
|-------------------------|----------------------|
| Total Forum Fees | = \$ 1,500.00 |
|-------------------------|----------------------|

1. The Panel assessed \$ 750.00 of the forum fees to Claimant Tiamat, Inc.
2. The Panel assessed \$ 750.00 of the forum fees to Respondent Charles Schwab & Co., Inc.

Fee Summary

1. Claimant Tiamat Inc. is charged with the following fees and costs:

| | |
|--|------------------|
| Initial Filing Fee | = \$ 225.00 |
| Forum Fees | = \$ 750.00 |
| Total Fees | = \$ 975.00 |
| Less payments | = \$ (975.00) |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 0.00 |

2. Respondent Charles Schwab & Co., Inc. is charged with the following fees and costs:

| | |
|--|----------------------|
| Counterclaim Filing Fee | = \$ 300.00 |
| Member Fees | = \$ 3,100.00 |
| Forum Fees | = \$ 750.00 |
| Total Fees | = \$ 4,150.00 |
| Less payments | = \$(1,300.00) |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 2,850.00 |

All balances are payable to NASD Dispute Resolution, Inc. and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

| | | |
|----------------------|---|--------------------------|
| Edward J. Vaia | - | Chair, Public Arbitrator |
| Robert B. Moran, MBA | - | Public Arbitrator |
| Robert H. Bothner | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Edward J. Vaia
Edward J. Vaia
Chair, Public Arbitrator

12/6/01
Signature Date

Robert B. Moran, MBA
Robert B. Moran, MBA
Public Arbitrator

Signature Date

Robert H. Bothner
Robert H. Bothner
Non-Public Arbitrator

Signature Date

12/6/01
Date of Service

ARBITRATION PANEL

Edward J. Vaia

Chair, Public Arbitrator

Robert B. Moran, MBA

Public Arbitrator

Robert H. Bothner

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Edward J. Vaia
Chair, Public Arbitrator

Signature Date


Robert B. Moran, MBA
Public Arbitrator

12-5-01
Signature Date

Robert H. Bothner
Non-Public Arbitrator

Signature Date

12/6/01
Date of Service

ARBITRATION PANEL

| | | |
|----------------------|---|--------------------------|
| Edward J. Vaia | - | Chair, Public Arbitrator |
| Robert B. Moran, MBA | - | Public Arbitrator |
| Robert H. Bothner | - | Non-Public Arbitrator |

Concurring Arbitrators' Signatures

Edward J. Vaia
Chair, Public Arbitrator

Signature Date

Robert B. Moran, MBA
Public Arbitrator

Signature Date



Robert H. Bothner
Non-Public Arbitrator

12-5-01

Signature Date

12/6/01

Date of Service