

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Hae Sim Lee and Hak Boong Choi, Claimants v. Charles Schwab & Company, Inc. Respondent

Case Number: 01-00947

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimants Hae Sim Lee and Hak Boong Choi:

Erwin J. Shustak, Esq.
Shustak Jalil & Heller
San Diego, California

For Respondent Charles Schwab & Company, Inc.:

Thomas L. Taylor, III, Esq.
Morgan, Lewis & Bockius, LLP
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: February 20, 2001

Claimants Hae Sim Lee's and Hak Boong Choi's Joint Uniform Submission Agreement signed:
February 20, 2001

Statement of Answer filed by Respondent Charles Schwab & Company, Inc.: April 23, 2002

Respondent Charles Schwab & Company, Inc.'s Uniform Submission Agreement signed:
April 23, 2001

CASE SUMMARY

Claimants alleged violation of state and federal securities laws, common law fraud, misrepresentation, conversion, churning, breach of fiduciary duty, unjust enrichment, and lack of supervision involving multiple unspecified securities.

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

RELIEF REQUESTED

Claimants requested \$1,224,352.76 in compensatory damages, interest, damages for lost opportunity, \$1,000,000.00 in punitive damages, and costs of arbitration, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants acknowledged that Ms. Hae Sim Lee was not petitioning the Panel as a Claimant on her own behalf for any monies of her own that she may have lost based on any of the allegations in the Statement of Claim or other pleadings in this matter, or for any of her money or assets that she may have commingled with the account of Mr. Hak Boong Choi, or both.

On February 4, 2002, Respondent moved that Claimants' interpreter not be permitted to act as such during the hearing, and that Respondent's interpreter, who is court certified, act for all parties as interpreter instead. After due deliberation in an Executive Session of the evidence, witnesses, and testimony presented by Respondent, and by Claimant in rebuttal, in this matter, the Panel unanimously ruled that Respondent's interpreter would act as the interpreter at the hearing, Respondent should be responsible for all costs for such interpreter, and that Claimants' interpreter could assist Claimants during the hearing as needed.

On February 4, 2002, Claimants moved that a tape be used to record the hearing instead of the court reporter provided by Respondent. Respondent moved that the court reporter be allowed to record the hearing. After due deliberation in an Executive Session of the evidence, witnesses, and testimony presented by Respondent and Claimants in this matter, the Panel unanimously ruled that both the tape recorder and Respondent's court reporter may simultaneously record the session provided that Respondent provides NASD Dispute Resolution, Inc. with a certified copy of the court reporter's record, and that Respondent shall be responsible for all costs associated with such court reporter.

On February 4, 2002, the Panel considered Respondent's motion to compel return of privileged documents or, in the alternative, to disqualify Claimants' counsel. After due deliberation in an Executive Session of the evidence, witnesses, and testimony presented by Respondent and Claimants in this matter, the Panel unanimously ruled that such documents are attorney work product and therefore are inadmissible. The Panel granted Respondent's motion in part and ordered Claimants to return such documents to Respondent, and denied Respondent's motion to disqualify Claimants' counsel.

On February 5, 2002, Respondent moved that the advertisement from the Korean Daily Times be inadmissible into evidence. After due deliberation in an Executive Session of the evidence, witnesses, and testimony presented by Claimants and Respondent in this matter, the Panel unanimously ruled that such advertisement is admissible because its probative value is not substantially outweighed by the danger of unfair prejudice and merely bears on the weight of Claimants' evidence. Respondent's motion was denied.

On February 5, 2002, Respondent moved the Panel to issue an Order to Appear vis-à-vis certain officers and stockbrokers of third-party brokerage firms where Claimants had opened other accounts. After due deliberation in an Executive Session of the evidence, witnesses, and testimony presented by Respondent and Claimants in this matter, the Panel unanimously ruled that such Order to Appear would be issued. The Panel so ordered.

On February 6, 2002, Respondent moved the Panel to compel Claimants to produce documents referred to in testimony that were not produced previously. After due deliberation in an Executive Session of the evidence, witnesses, and testimony presented by the parties in this matter, the Panel unanimously ruled that Claimants must produce all documents in their possession or under their control that were related to this matter that had not been produced previously.

On February 6, 2002, Respondent moved the Panel to allow Respondent to put on its expert witness out of order; i.e., during Claimants' case-in-chief. After due deliberation in an Executive Session of the evidence, witnesses, and testimony presented by the parties in this matter, the Panel unanimously ruled that there was no compelling reason for Respondent's expert witness to testify before Claimants presented their case-in-chief, and that to allow such would be prejudicial to Claimants.

On February 8, 2002, Claimants moved the Panel to compel Respondent to produce a certain exhibit referenced as attached to the personnel file of Don Cho relating to the reason he was fired. Respondent moved the Panel to deny such motion on the grounds that such exhibits were attorney/client privileged documents or attorney work product or both. On February 11, 2002, Respondent produced such exhibit to the Panel in camera, and after due deliberation in an Executive Session of the evidence, witnesses, and testimony presented by the parties in this matter, the Panel unanimously ruled that the exhibit was not privileged, and therefore admissible. The Panel ordered Respondent to produce the document to Claimants.

On February 11, 2002, Respondent moved the Panel to continue the hearing to allow Respondent time to (i) petition the court to issue a subpoena to compel Don Cho to attend the arbitration hearing and testify, (ii) locate the immediate supervisor of Don Cho at the time shortly before and during Cho's termination, and to present expert testimony vis-à-vis questions raised by the Panel relating to the Korean language and Korean business practices. After due deliberation in an Executive Session of the evidence, witnesses, and testimony presented by the parties in this

matter, the Panel unanimously denied Respondent's motion, and in pertinent part stated on the record that the Panel was sufficiently satisfied that the questions raised by the Panel had been adequately answered.

On February 11, 2002, Respondent moved the Panel to permit Respondent to file a post-hearing brief. After due deliberation in an Executive Session of the evidence, witnesses, and testimony presented by the parties in this matter, the Panel unanimously ruled that Respondent may file a post-hearing brief if it so chooses on or before February 18, 2002; Claimants' opposition to such may be filed on or before February 25, 2002, and Respondent's reply to Claimants' opposition, if any, may be filed with the NASD on or before February 28, 2002.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS

The Panel finds that:

Claimant Hae Sim Lee ("Lee") acted on behalf of her brother, Claimant Hak Boong Choi ("Choi"), as his agent pursuant to a general power of attorney in respect of certain funds belonging to Choi under the control of Lee.

Respondent Charles Schwab & Co., Inc. ("Schwab") provided its agent Don Cho ("Cho") with business cards containing in pertinent part the designation: Investment Specialist I, and later, Investment Specialist II. In addition, in pertinent part, Schwab rewarded Cho for accounts he opened that were, or converted to, trading accounts (even if such accounts were only required to make de minimus trades each year). Such designations as Investment Specialist on Cho's card gave Respondent's agent, Cho, apparent authority to recommend specific investments to Lee.

Cho was fluent in the English language, and that Schwab had no duty to provide documentation or explanation in the Korean language to Lee or any customer having Korean as his or her native language.

Choi directed Lee as his agent to invest his funds in mutual funds to be chosen by Lee, not in an investment portfolio. In reliance on Cho's advice, however, Lee (without the knowledge or authorization of Choi) invested Choi's funds primarily in a diversified portfolio of common stocks, and began to use margin, as recommended by Cho. After a series of margin calls, Lee could not contact Cho and on her own volition moved her account to Daehan Securities. Later, after Cho had persuaded her to move her account from Daehan Securities back to Schwab, and in reliance on Cho's apparent authority to make investment recommendations while at Schwab, Lee (without Choi's knowledge or authorization) liquidated the portfolio of stocks and mutual funds

and began to day trade in a few speculative stocks, incurring significant losses on behalf of Choi, both at Schwab and away from Schwab, pursuant to the advice of Cho.

Thereafter, again without the knowledge or authorization of Choi, Lee entered into an agreement with Cho in which Cho would advise Lee vis-à-vis option trading, and in this regard, Lee suffered additional losses based on alleged fraud by Cho and poor option investments. While Lee was justified in relying on Cho's apparent authority to provide investment advice, the Panel finds that, at some point after Lee began her day trading activities she was no longer relying on Cho's investment advice but was acting on her own initiative in buying and selling securities each day. Moreover, even though testimony of third party witnesses subpoenaed by Respondent as rebuttal witnesses supported Lee's testimony that she did not want to trade on margin or in options, and that she relied on the advice of her brokers to complete the new account statements, the Panel finds that she did understand the difference between Schwab and other brokerage firms.

Accordingly, the Panel finds that Lee breached the fiduciary duty she owed to Choi by improperly investing Choi's money, and therefore is responsible for Choi's losses. In Lee's capacity as agent for Choi, however, Schwab bears part of the responsibility for Choi's losses at Schwab as a discount broker because it cloaked its agent Cho with apparent authority to make recommendations by allowing him to include the designation Investment Specialist I and Investment Specialist II on his business card.

Subject to the award below to Choi, Respondent Schwab is found not liable for any losses suffered by Lee in respect of her personal funds that she commingled in Choi's account, and therefore (except for the award to Choi set out below) all claims by Lee against Schwab relating to Lee are hereby dismissed.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Charles Schwab & Company, Inc. is liable to and shall pay Claimant Hak Boong Choi \$156,250.00 in compensatory damages.
- 2) Respondent Charles Schwab & Company, Inc. is liable to and shall pay Claimant Hak Boong Choi \$11,646.88 in costs.
- 3) All other relief 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	= \$ 500.00
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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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Charles Schwab & Company, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 4,500.00</u>
Total Member Fees	= \$ 7,600.00

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/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,200/session	= \$ 1,200.00
Pre-hearing conference: August 27, 2001	1 session
(12) Hearing sessions @ \$1,200/session	= \$14,400.00
Hearings: February 4, 2002	2 sessions
February 5, 2002	2 sessions
February 6, 2002	2 sessions
February 7, 2002	2 sessions
February 8, 2002	2 sessions
February 11, 2002	2 sessions
Total Forum Fees	= \$15,600.00

1. The Panel assessed \$7,800.00 of the forum fees jointly and severally to Claimants Hae Sim Lee and Hak Boong Choi.
2. The Panel assessed \$7,800.00 of the forum fees to Respondent Charles Schwab & Company, Inc.

Fee Summary

1. Claimants Hae Sim Lee and Hak Boong Choi are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$ 7,800.00</u>
Total Fees	= \$ 8,300.00
<u>Less payments</u>	<u>= \$(1,800.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,500.00

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

Member Fees	= \$ 7,600.00
<u>Forum Fees</u>	<u>= \$ 7,800.00</u>
Total Fees	= \$15,400.00
<u>Less payments</u>	<u>= \$(7,600.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 7,800.00

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

<i>Michael R.E. Sanders, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Royal D. Heisser</i>	-	<i>Public Arbitrator</i>
<i>Arbitrator's Name</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Michael R.E. Sanders, Esq.
Chair, Public Arbitrator

Signature Date

Royal D. Heisser
Royal D. Heisser
Public Arbitrator

4-2-2002
Signature Date

Kenneth I. Rosenblum
Non-Public Arbitrator

Signature Date

4-03-02
Date of Service


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ARBITRATION PANEL

Michael R.E. Sanders, Esq.
Royal D. Heisser
Arbitrator's Name

- *Public Arbitrator, Presiding Chair*
- *Public Arbitrator*
- *Non-Public Arbitrator*

Concurring Arbitrators' Signatures


Michael R.E. Sanders, Esq.
Chair, Public Arbitrator

04/02/02
Signature Date

Royal D. Heisser
Public Arbitrator

Signature Date

Kenneth I. Rosenblum
Non-Public Arbitrator

Signature Date

4-03-02
Date of Service

ARBITRATION PANEL

<i>Michael R.E. Sanders, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Royal D. Heisser</i>	-	<i>Public Arbitrator</i>
<i>Arbitrator's Name</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

Michael R.E. Sanders, Esq.
Chair, Public Arbitrator

Signature Date

Royal D. Heisser
Public Arbitrator

Signature Date



Kenneth L. Rosenblum
Non-Public Arbitrator

4/2/02

Signature Date

4-03-02

Date of Service