

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

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In the Matter of the Arbitration Between

Name of Claimants

Terry Coleman and Josette Coleman

and

01-01651  
Phoenix, Arizona

Name of Respondent

Charles Schwab & Co., Inc.

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**REPRESENTATION OF PARTIES**

Terry Coleman and Josette Coleman ("**Claimants**") were represented at the hearing by Rosemary J. Shockman, Esq., Phoenix, Arizona. Prior to the hearing by Terry Coleman.

Charles Schwab & Co., Inc. ("**Respondent**") was represented by Brandon K. Hemley, Esq., Charles Schwab & Company, Inc., San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 3, 2001. Claimants Statement of Answer to Defendants Counterclaim was filed on or about June 4, 2001. Submission Agreement of Claimant Terry Coleman and Josette Coleman was signed on March 29, 2001.

Statement of Answer was filed by Respondent Charles Schwab & Co., Inc. on or about May 29, 2001. Submission Agreement of Respondent Charles Schwab & Co., Inc. was signed on May 21, 2001 by Brandon Hemley.

**CASE SUMMARY**

Claimants alleged that they were induced to make a trade based on false information regarding the margin and/or maintenance requirements for the purchase of Covad stock on margin, provided by or on behalf of Respondent. In the Statement of Answer to Defendants Counterclaim, Claimants stated that the losses suffered were caused by the erroneous and false information provided by an employee of Respondent which were the inducement to and relied upon by Claimants in making the trade in question.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that the Claimants' losses were entirely the result of their own self-directed trading decisions and an unfortunate sharp and sudden decline in the price of the stock purchased.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested the following relief:

1. That the Covad buy order placed with the erroneous advice, recommendation and false information of Fuller, a Schwab representative, be reversed and the Claimants account be restored to the \$30,000.00 money fund deposit, as of October 13<sup>th</sup> 2000, and that the final \$4,300 debit balance be credited to my account.
2. That the Respondent Charles Schwab be instructed not to report any adverse information to the national credit bureaus regarding the Claimants, as they have threatened to do, until this matter is resolved at arbitration.
3. That the Claimants receive normal interest that would be paid on the above mentioned money market account from October 13<sup>th</sup> 2000 up to date of resolution of this dispute.
4. That the Claimants be reimbursed for their Forum Fees, Attorneys' Fees, Witness and Production Fees and Other Case-Related Costs, per ARS 44-201.

Respondent requested that the Arbitration Panel:

1. Deny the Colemans' claim in its entirety.
2. Award Schwab its costs and fees in defending this meritless claim and pursuing its counterclaim.
3. Award Schwab the principal sum of \$4,312.27, together with interest at the rate of 8.5% per annum from October 31, 2000 until paid, on its counterclaim.

### **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 original(s) 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 arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

**Findings of Fact**

1. The Claimants have not established that the Respondent made any material misrepresentations or omitted to disclose any material information in connection with Claimant Terry Coleman's security purchases with the Respondent;
2. The Claimants have established that the negligent acts of Respondent and its employees contributed to Claimants' losses by, *inter alia*, failing to ensure that Claimant Terry Coleman was accurately informed of the relevant maintenance requirement pertaining to the security he chose to invest in and that Claimant understood the difference between the margin requirement and the maintenance requirement applicable to this security;
3. The evidence also establishes that the Claimants failed to take reasonable, prudent and timely measures readily available to them to liquidate their security position and thereby minimize their investment losses; however, the evidence further demonstrates that the actions and inactions of Respondent's employees contributed to Claimants' failure to mitigate;
4. The evidence supports an allocation of liability based on the relative degrees of fault of the parties as follows: the actions and inactions of Respondent and its employees caused or contributed to 70% of Claimants' losses, and Claimants' failure to mitigate their damages contributed to 30% of their total losses of \$34,312.27; and
5. Claimants have not demonstrated that the Respondent failed to timely produce any documents or information in response to Claimants' written, prehearing discovery requests.

**BASED ON THE FOREGOING FINDINGS, IT IS HEREBY ORDERED AS FOLLOWS:**

1. The Claimants are awarded damages in the principal amount of \$24,018.59 plus accrued interest at the Arizona statutory rate from October 19, 2000 until paid in full;
2. The Respondent shall take nothing on its counterclaim against the Claimant for the debit balance of \$4,312.27 in Claimants' margin account with the Respondent;
3. Claimants' motions for sanctions against Respondent relating to Claimants' First and second motions to compel the production of documents and information are denied;
4. 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.
5. 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	= \$150.00
Counter claim filing fee	= \$400.00

#### **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 Charles Schwab & Co., Inc.

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

#### **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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference(s): August 23, 2001 1 session	
Two (2) Hearing sessions x \$450.00	= \$ 900.00
Hearing Date(s): <u>January 10, 2002</u> <u>2 sessions</u>	
Total Forum Fees	= \$1,350.00

The Arbitrator has assessed \$405.00 of the forum fees to Terry Coleman and Josette Coleman.

The Arbitrator has assessed \$945.00 of the forum fees to Charles Schwab & Co., Inc.

**Fee Summary**

Claimants, Terry Coleman and Josette Coleman, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 150.00
<u>Forum Fees</u>	= \$ 405.00
Total Fees	= \$ 555.00
<u>Less payments</u>	= \$ 600.00
Balance to be refunded by NASD Dispute Resolution, Inc.	= \$ 45.00

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

Counter Claim Filing Fee	= \$ 400.00
Member Fees	= \$2,200.00
<u>Forum Fees</u>	= \$ 945.00
Total Fees	= \$3,545.00
<u>Less payments</u>	= \$2,725.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 820.00

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

**ARBITRATOR**

Katherine M. Harmeyer, Esq. - Public Arbitrator, Presiding Chair

/s/ Katherine M. Harmeyer

Katherine M. Harmeyer, Esq.  
Public Arbitrator, Presiding Chair

January 22, 2002

Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 01-01651  
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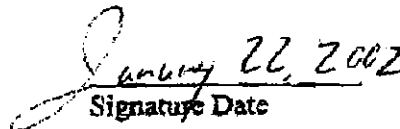
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**ARBITRATOR**

Katherine M. Harmeyer, Esq. - Public Arbitrator, Presiding Chair



Katherine M. Harmeyer, Esq.  
Public Arbitrator, Presiding Chair



January 22, 2002  
Signature Date