

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jay Farber and Russ Farber, Claimants v. Charles Schwab & Company, Inc. and Morgan Stanley DW Inc., Respondents

Case Number: 01-03017

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimants Jay Farber and Russ Farber:

Timothy D. McGonigle, Esq.
Law Offices of
Timothy D. McGonigle
Los Angeles, California

For Respondent Charles Schwab & Company, Inc.:

Janet Epstein, Esq.
Charles Schwab & Company, Inc.
San Francisco, California

For Respondent Morgan Stanley DW Inc.:

Edward S. Kim, Esq.
Stradling, Yocca, Carlson
& Rauth
Newport Beach, California

CASE INFORMATION

Statement of Claim filed: June 4, 2001

Claimants' Joint Uniform Submission Agreement signed: May 10, 2001

Statement of Answer filed by Respondent Charles Schwab & Company, Inc.:
September 26, 2001

Respondent Charles Schwab & Company, Inc.'s Uniform Submission Agreement signed:
September 25, 2001

Statement of Answer filed by Respondent Morgan Stanley DW Inc.:
December 3, 2001

Respondent Morgan Stanley DW Inc.'s Uniform Submission Agreement signed:
February 14, 2002

CASE SUMMARY

Claimants alleged breach of contract, negligence, fraud, negligent misrepresentation, concealment, and failure to effect transfer of Claimants' account from Respondent Morgan Stanley DW Inc. to Respondent Charles Schwab & Company, Inc. in a timely fashion. Claimants' allegations concerned the refusal by Respondents to execute Claimants' buy and sell orders regarding options in Qualcomm, Inc. and other securities as requested by Claimants.

Respondents Charles Schwab & Company, Inc. and Morgan Stanley DW Inc. each denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested compensatory damages in excess of \$500,000.00, interest, and costs, including attorney's fees.

Respondents Charles Schwab & Company, Inc. and Morgan Stanley DW, Inc. each requested dismissal of the Claimants' Statement of Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On January 2, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On January 29, 2003, Respondent Charles Schwab & Company, Inc.'s counsel signed a Waiver Agreement on said Respondent's behalf, expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators on behalf of Respondents.

On January 29, 2003, Respondent Morgan Stanley DW Inc.'s counsel signed a Waiver Agreement on said Respondent's behalf, expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators on behalf of Respondents.

On September 26, 2001, Respondent Charles Schwab & Company, Inc. moved the Panel to dismiss the Statement of Claim. This motion was not ruled upon before the hearing, but was not renewed at the hearing, and, therefore, was not heard or ruled upon.

On January 27, 2003, during the first day of the hearing, Claimants dismissed all claims against Morgan Stanley DW, Inc. and announced that Claimant would reimburse Morgan Stanley DW, Inc. for all forum fees (but no other fees) assessed to said Respondent.

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, 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 Claimants the sum of \$25,000.00 in compensatory damages.
- 2) Respondent Charles Schwab & Company, Inc. is liable to and shall pay Claimants the sum of \$5,250.00 in interest.
- 3) Respondent Charles Schwab & Company, Inc. is liable to and shall pay Claimants the sum of \$12,500.00 in costs.
- 4) Except as specifically set forth in paragraph 3), above, the parties shall bear their respective costs, including attorney's fees.
- 5) 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 received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
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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 firms Charles Schwab & Company, Inc. and Morgan Stanley DW Inc. are parties and the following fees are assessed to each:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
Hearing Process Fee	= \$ 2,500.00
Total Member Fees	= \$ 4,600.00

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 or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: May 22, 2002 1 session	
Six (6) Hearing sessions @ \$1,125.00/session	= \$ 6,750.00
Hearings: January 27, 2003 2 sessions	
January 28, 2003 2 sessions	
January 29, 2003 2 sessions	
Total Forum Fees	= \$ 7,875.00

The Panel assessed the entire balance of \$7,875.00 of the forum fees to Respondent Charles Schwab & Company, Inc.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimants requested 36 photocopies @ \$.50	= \$ 18.00
Respondent Morgan Stanley DW, Inc. requested 2 audio tapes @ \$15.00	= \$ 30.00

Fee Summary

1. Claimants Jay Farber and Russ Farber are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Administrative Costs</u>	= \$ 18.00
Total Fees	= \$ 318.00
<u>Less payments</u>	= \$(1,575.00)
Refund Due from NASD Dispute Resolution	= \$(1,257.00)

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

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 7,875.00
Total Fees	= \$12,475.00
<u>Less payments</u>	= \$(6,700.00)
Balance Due NASD Dispute Resolution	= \$ 5,775.00

3. Respondent Morgan Stanley DW Inc., is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
<u>Administrative Costs</u>	= \$ 30.00
Total Fees	= \$ 4,630.00
<u>Less payments</u>	= \$(6,130.00)
Refund Due from NASD Dispute Resolution	= \$(1,500.00)

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

ARBITRATION PANEL

David F. Morgan, Esq.	-	Public Arbitrator, Presiding Chair
Laurel Littman Gothelf, MPH	-	Public Arbitrator
Robert D. Sussin, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


David F. Morgan, Esq.
Chair, Public Arbitrator

02/11/2003
Signature Date

Laurel Littman Gothelf, MPH
Public Arbitrator

Signature Date

Robert D. Sussin, Esq.
Non-Public Arbitrator

Signature Date

2/11/03
Date of Service

ARBITRATION PANEL

<i>David F. Morgan, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Laurel Littman Gothelf, MPH</i>	-	<i>Public Arbitrator</i>
<i>Robert D. Sussin, Esq.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

David F. Morgan, Esq.
Chair, Public Arbitrator

Signature Date



Laurel Littman Gothelf, MPH
Public Arbitrator

2-10-03

Signature Date

Robert D. Sussin, Esq.
Non-Public Arbitrator

Signature Date

2/11/03

Date of Service

ARBITRATION PANEL

<i>David F. Morgan, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Laurel Litman Gothelf, MPH</i>	-	<i>Public Arbitrator</i>
<i>Robert D. Sussin, Esq.</i>	-	<i>Non-Public Arbitrator</i>


Consent of Arbitrators' Signatures

David F. Morgan, Esq.
Chair, Public Arbitrator

Signature Date

Laurel Litman Gothelf, MPH
Public Arbitrator

Signature Date



Robert D. Sussin, Esq.
Non-Public Arbitrator

02 11 03
Signature Date

2/11/03

Date of Service