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Award  
NASD Dispute Resolution, Inc.

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In the Matter of the Arbitration Between:

Joan Lyman (Claimant) v. Charles Schwab & Company Inc., Ogilvie Security Advisors Corporation, Huber Financial Group, Limited, and David J. Huber (Respondents).

Case Number: 01-03088

Hearing Site: Chicago, Illinois

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REPRESENTATION OF PARTIES

Paul J. Sussman, Esq. located in Chicago, Illinois represented Claimant Joan Lyman.

Curt H. Mueller, Esq., located in San Francisco, California represented Respondent Charles Schwab & Company ("Charles Schwab").

John D. Dalton, Esq., of the Firm Merlo Kanofsky & Brinkmeier Ltd. located in Chicago, Illinois represented Respondents David J. Huber ("Huber"), Huber Financial Group ("Huber Financial") and Ogilvie Securities Advisors Corporation ("Ogilvie").

CASE INFORMATION

Statement of Claim filed on or about: June 13, 2001.

Claimant signed the Uniform Submission Agreement on or about: May 25, 2001.

Respondent Charles Schwab filed a Statement of Answer and Motion to Dismiss on or about: August 2, 2001.

Curt H. Mueller, Vice President and Senior Corporate Counsel for Charles Schwab signed the Uniform Submission Agreement on August 9, 2001.

Respondents Huber and Huber Financial filed a joint Statement of Answer on or about: August 3, 2001

Respondent Huber individually and on behalf of Huber Financial signed the Uniform Submission Agreement on July 20, 2001.

Respondent Ogilvie filed a Statement of Answer and Motion to Dismiss on or about: October 30, 2001.

Respondent Ogilvie signed a Uniform Submission Agreement on October 18, 2001.

Claimant filed a response to Respondent Charles Schwab's Motion to Dismiss on or about: August 16, 2001.

Claimant filed a response to Respondent Ogilvie's Motion to Dismiss on or about: November 23, 2001.

Respondent Charles Schwab filed a Reply to Claimant's response to its Motion to Dismiss on or about: March 4, 2002.

Respondent Ogilvie filed a Reply in Support of its Motion to Dismiss on or about: March 1, 2002.

### CASE SUMMARY

Claimant asserted the following causes of action: Breach of Contract, Breach of Fiduciary Duty, Misrepresentation, Suitability, Omission of Facts, Failure to Supervise, Fraud and Violation of Securities Laws.

The causes of action relate to unsuitable purchases and failure to sell after minimum losses of the following technology stocks for Claimant's retirement account: Northpoint Communications, Metrocall, Inc. and Waverider Communication.

Unless specifically admitted in its Answer, Respondent Charles Schwab denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Respondent Schwab had no duty to supervise Huber or to monitor Claimant's account.
2. Respondent Schwab did not violate any NASD Rules.
3. Respondent Schwab and Huber are completely separate entities and Huber in no way can be considered an "associated person" of Schwab as that term is defined in the securities laws.
4. Moreover, it is well-settled law that there is no private right of action for a violation of NASD rules.
5. Claimant's allegation that Respondent Schwab violated NASD rules totally lacks merit.

Unless specifically admitted in its Answer, Respondent Ogilvie denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Claimant's Statement of Claim should be dismissed because it fails to state a cause of action.
2. The relief sought within the Statement of Claim should be denied because the Claimant with full knowledge of all the relevant facts, approved, authorized and/or ratified each and every trade executed on her behalf in her account.

3. The Statement of Claim is barred because the Claimant failed to mitigate her alleged damages.
4. The Claimant is equitably estopped from bringing her alleged claims.
5. Respondent Ogilvie did not have actual control over the operations of Huber and Huber Financial in general or the ability to control the transactions upon which the alleged violations are predicated.
6. Respondent Ogilvie had no supervisory responsibility over Huber or Huber Financial for the transactions at issue in this matter.
7. Respondent Ogilvie acted in good faith and did not directly or indirectly induce the act or acts constituting the alleged violation in the Statement of Claim.

Unless specifically admitted in the joint Statement of Answer, Respondents Huber and Huber Financial denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The Claimant's Statement of Claim should be dismissed because it fails to state a cause of action.
2. The relief sought within the Statement of Claim should be denied because the Claimant with full knowledge of all the relevant facts, approved, authorized and /or ratified each and every trade executed on her behalf in her account.
3. The Statement of Claim is barred because the Claimant failed to mitigate her alleged damages.
4. The Claimant is equitably estopped from bringing her alleged claims.

#### RELIEF REQUESTED

Claimant requested:

Compensatory Damages	unspecified
Punitive damages	\$100,000.00
Interests	Unspecified
Costs	Unspecified
Other	Unspecified.

All Respondents requested that the Statement of Claim be dismissed in its entirety and that the Claimant be ordered to pay Respondents costs and be given other relief as is just and proper.

#### OTHER ISSUES CONSIDERED AND DECIDED

On April 9 2002, the undersigned Arbitration Panel denied Respondents Charles Schwab and Ogilvie Motions to Dismiss without prejudice and noted that the Motions will be reconsidered after presentation of Claimant's evidence at the hearing.

On June 25, 2002, the undersigned Arbitration Panel dismissed all claims against Respondents Charles Schwab and Ogilvie Securities.

## AWARD

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

1. Respondents Huber Financial Group Ltd., and David Huber are jointly and severally liable for and shall pay to Claimant Joan Lyman the sum of Twenty-two Thousand Nine Hundred and Eighty Five and No Cents (\$22,985.00) as Compensatory Damages.
2. Any and all claims asserted against Charles Schwab & Company Inc., Ogilvie Security Advisors Corporation are denied.
3. Except as otherwise specified herein, each party shall bear its own costs and attorney's fees.
4. Any and all relief not specifically addressed herein, including Punitive Damages, is denied.

## 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
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### 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 at the time of the event(s) giving rise to the dispute. In this matter, the member firms, Charles Schwab and Ogilvie, are a parties to this matter.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

### Forum Fees and Assessments

The Panel has the authority to assess 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:

Two (2) Pre-hearing sessions with panel x \$750	= \$ 1,500.00
Pre-hearing conferences: February 27, 2002	1 session
May 9, 2002	1 session
Three (3) Hearing sessions x \$750	= \$ 2,250.00
Hearing Dates: June 25, 2002	2 sessions
June 26, 2002	1 session
Total Forum Fees	= \$3,750.00

The Panel has assessed the forum fees in equal shares between:

1. Claimant Joan Lyman
2. Respondent Charles Schwab & Company, Inc.
3. Ogilvie Securities Corporation
4. One share to be paid jointly and severally by Respondents Huber Financial Group, Ltd., and David J. Huber.

Each ¼ share is \$937.50.

#### Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio, transcripts, retrieval of documents from archives, interpreters and security.

Claimant's Costs for copies: \$16.25

#### FEE SUMMARY

1. Claimant Joan Lyman, is solely liable for:

Forum Fees	= \$ 937.50
Administrative Costs	= \$ 16.25
<u>Initial Filing Fee</u>	= \$ 225.00
Total Fees	= \$ 1178.75
<u>Less payments</u>	= \$ 1425.00
Balance Due From NASD Dispute Resolution, Inc.	= \$ 246.50

2. Respondent Charles Schwab & Company, Inc., is solely liable for:

Member Fees	= \$ 3,450.00
<u>Forum Fees</u>	= \$ 937.50
Total Fees	= \$ 4,387.50
<u>Less payments</u>	= \$ 3,450.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 937.50

3. Respondent Ogilvie Security Advisors Corporation, is solely liable for:

Member Fees	= \$3,350.00
<u>Forum Fees</u>	= \$ 937.50
Total Fees	= \$ 4,287.50
<u>Less payments</u>	= \$ 3,450.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 837.50

4. Respondents David Huber and Huber Financial Group, Ltd., are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 937.50
Total Fees	= \$ 937.50
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 937.50

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

James D. Adducci, Esq.	-	Public, Presiding Chair
Mitchell L. Marinello, Esq.	-	Public Arbitrator
Jeffrey S. Fannon	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ James D. Adducci

July 25, 2002

\_\_\_\_\_  
James D. Adducci, Esq.  
Public Arbitrator, Presiding Chair

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

/s/ Mitchell L. Marinello

July 24, 2002

\_\_\_\_\_  
Mitchell L. Marinello, Esq.  
Public Arbitrator

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

/s/ Jeffrey S. Fannon

July 24, 2002

\_\_\_\_\_  
Jeffrey S. Fannon  
Non-Public Arbitrator

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

August 05, 2002

\_\_\_\_\_  
Date of Service (For NASD-Dispute Resolution office use only)

## 3. Respondent Ogilvie Security Advisors Corporation, is solely liable for:

Member Fees	= \$3,350.00
Forum Fees	= \$ 937.50
Total Fees	= \$ 4,287.50
Less payments	= \$ 3,450.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 837.50

## 4. Respondents David Huber and Huber Financial Group, Ltd., are jointly and severally liable for:

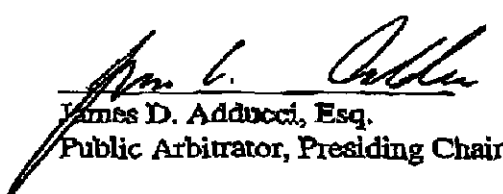
Forum Fees	= \$ 937.50
Total Fees	= \$ 937.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 937.50

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

James D. Adducci, Esq.	-	Public, Presiding Chair
Mitchell L. Marinello, Esq.	-	Public Arbitrator
Jeffrey S. Fannon	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
James D. Adducci, Esq.  
Public Arbitrator, Presiding Chair

July 25, 2002  
Signature Date

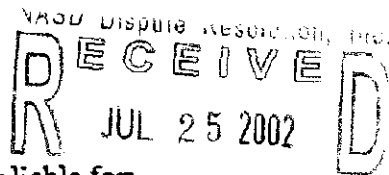
\_\_\_\_\_  
Mitchell L. Marinello, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Jeffrey S. Fannon  
Non-Public Arbitrator

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

Date of Service (For NASD-Dispute Resolution office use only)



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Member Fees	= \$3,350.00
Forum Fees	= \$ 937.50
Total Fees	= \$ 4,287.50
Less payments	= \$ 3,450.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 837.50

4. Respondents David Huber and Huber Financial Group, Ltd., are jointly and severally liable for:

Forum Fees	= \$ 937.50
Total Fees	= \$ 937.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 937.50

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

James D. Adducci, Esq.	-	Public, Presiding Chair
Mitchell L. Marinello, Esq.	-	Public Arbitrator
Jeffrey S. Fannon	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James D. Adducci, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

  
Mitchell L. Marinello, Esq.  
Public Arbitrator

  
Signature Date

Jeffrey S. Fannon  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)



## 3. Respondent Ogilvie Security Advisors Corporation, is solely liable for:

Member Fees	= \$3,350.00
Forum Fees	= \$ 937.50
Total Fees	= \$ 4,287.50
Less payments	= \$ 3,450.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 837.50

## 4. Respondents David Huber and Huber Financial Group, Ltd., are jointly and severally liable for:

Forum Fees	= \$ 937.50
Total Fees	= \$ 937.50
Less payments	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 937.50

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

James D. Adducci, Esq.	Public, Presiding Chair
Mitchell L. Marinello, Esq. -	Public Arbitrator
Jeffrey S. Fannon -	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James D. Adducci, Esq.  
Public Arbitrator, Presiding Chair

Signature Date

Mitchell L. Marinello, Esq.  
Public Arbitrator

Signature Date

  
Jeffrey S. Fannon  
Non-Public Arbitrator

7-24-02  
Signature Date

Date of Service (For NASD Dispute Resolution office use only)