

PACIFIC EXCHANGE, INC.
115 Sansome Street, 3rd Floor
San Francisco, California 94104

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REGISTRATION

In The Matter Of The Arbitration Between

PAUL SCHREIBMAN,

Claimant,

v.

CHARLES SCHWAB & CO.,

Respondent

PCX CASE # 01-S008

DECISION

The undersigned Arbitrator, having read and considered the Claim submitted by Claimant on May 18, 2001 and the Answer of Respondent, hereby renders the following Decision pursuant to Rules 12.2 and 12.29(a) of the Rules of the Board of Governors of the Pacific Exchange.

REPRESENTATION OF PARTIES

Of Claimant: Paul Schreiberman
Of Respondent: Beth Greenspan Esq.
Charles Schwab & Co.

SUMMARY OF FACTS

On January 11, 2001 Claimant used a portable phone while in the Caribbean island of St. Maarten to execute a sell order via Respondent's Telebroker system with respect to his shares of Openwave. Claimant believed he used the Telebroker system to sell 2000 shares, the only shares he owned as of January 11, 2001. Claimant states a 2-3 second pause in the instructions by the Telebroker system caused him to remove the phone from his car and miss instructions resulting in a mistaken duplication of his sell order and the sale of 4000 shares of Openwave. On January 12, 2001 Claimant's good-till-canceled ("GTC") order to sell 1000 shares of Openwave executed.

ISSUES PRESENTED

The issue is which party is liable for the loss incurred by Claimant because the short covering purchase of Openwave shares by Respondent exceeded the net proceeds from the sale of the shares owned by Claimant.

RELIEF REQUESTED

Claimant seeks a refund of the loss of \$7,268.97 that Claimant incurred as a result of Respondent selling more securities than Claimant owned.

FINDINGS AND DECISION

After considering the argument and evidence from both the Claimant and Respondent in this matter, the undersigned Arbitrator makes the following findings:

1. Claimant owned 2000 shares of Openwave on January 11, 2001.
2. On January 11, 2001, while abroad, Claimant attempted to sell these shares using Respondent's Telebroker system while using a portable phone.
3. Claimant did not hear the instructions of that system because he was pushing keys while the instructions were issued and on January 11, 2001 he mistakenly entered two separate market orders to sell a total of 4000 shares of Openwave.
4. Claimant presented no evidence regarding whether the instructions of the Telebroker system were delayed due to the use of a portable phone system outside the country or whether the Telebroker system has such lengthy pauses in it regardless of the location and equipment of the party accessing the system that it causes confusion and is defective.
5. On January 12, 2001 Claimant had an open GTC order to sell 1000 shares of Openwave shares at a limit price of \$42.00.
6. On January 12, 2001 Claimant's GTC order executed.
7. Subsequent to the execution of that GTC order, Claimant's account was short 3000 shares of Openwave. Respondent purchased shares to cover.
8. The difference between the total net proceeds from the sale of the shares and amount of the short covering purchase was \$7,268.97.
9. Claimant did not confirm his activity until he returned home at some undisclosed time.

After considering the argument and evidence of both the Claimant and Respondent in this matter, the undersigned Arbitrator makes the final determination and decision of the issues presented as set forth:

Claimant failed to establish that the Telebroker system is defective and that the defect induced him to miss instructions/warnings with respect to the second order to sell 2000 shares of Openwave. Claimant assumed the risk of using the Telebroker system while abroad and of not confirming his orders shortly after they were executed under conditions that created doubt regarding whether he had conveyed the appropriate actions he wanted. Claimant failed to show that he did not have an open GTC order to sell 1000 shares of Openwave on January 12, 2001.

Each party is to bear its own filing fees, hearing session deposit, and cost of this arbitration. This matter should not be referred to any regulatory organization for disciplinary investigation of rule violations or violation of federal securities laws.

Dated: October 5, 2001



Mary Margaret Bush, Esq.