

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Hardin Family Charitable Trust No. 1, Hardin Family Charitable Trust No. 2, The Hardin Family Trust, The Hardin Family Income Trust, Mary Ellen Hardin, and Dennis Hardin, Claimants v. Charles Schwab & Co., Inc., The Charles Schwab Corporation, U.S. Trust, U.S. Trust Company, N. A., and Maureen F. Gallogly, Respondents

U.S. Trust Company, N. A., Counter-Claimant v. Mary Ellen Hardin and Dennis Hardin, Counter-Respondents

Case Number: 03-06069

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member, Non-Members, and Associated Person
Non-Member v. Customers

REPRESENTATION OF PARTIES

For Claimants:

John Lawrence Allen, Esq.
Law Offices of John Lawrence Allen
New York, New York

For Respondents:

Mark T. Dooks, Esq.
Thomas V. Reichert, Esq.
Bird, Marella, Boxer & Wolpert
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: August 21, 2003

First Amended Statement of Claim filed: February 11, 2004

Claimants' Joint Uniform Submission Agreement signed: August 20, 2003

Joint Statement of Answer filed by Respondents Charles Schwab & Co., Inc., The Charles Schwab Corporation, Maureen F. Gallogly, and Respondent/Counter-Claimant U.S. Trust Company, N. A.: November 24, 2003

Statement of Answer to First Amended Statement of Claim and Counterclaim filed by U.S. Trust Company, N. A.: March 25, 2004

Respondent Charles Schwab & Co., Inc.'s Uniform Submission Agreement signed:
November 21, 2003

Respondent The Charles Schwab Corporation's Uniform Submission Agreement signed:
November 21, 2003

Respondent/Counter-Claimant U.S. Trust Company, N. A.'s Uniform Submission Agreement signed: November 24, 2003

Respondent Maureen F. Gallogly's Uniform Submission Agreement signed: November 24, 2003

CASE SUMMARY

In the Statement of Claim and First Amended Statement of Claim, Claimants alleged unsuitability, failure to supervise, breach of contract, breach of fiduciary duty, fraud, misrepresentations, and violation of federal and state securities laws. The claims involved various securities including Ariba Inc., China Telecom Hong Kong, Broadcom, Internet Capital Group, Level 3 Communications, Phone.com, 24/7 Media, China Mobile HK, Exodus Communications, S1 Corp., Agilent Technologies, Lucent Technologies, Brocade Communications, and QLT Phototherapeutics.

In the First Amended Statement of Claim, Claimants withdrew Charles Schwab & Co., Inc., The Charles Schwab Corporation, U.S. Trust, and Maureen F. Gallogly as Respondents.

Respondents denied the allegations of wrongdoing set forth in the Statement of Claim.

Respondent/Counter-Claimant U.S. Trust Company, N. A. denied the allegations of wrongdoing set forth in the First Amended Statement of Claim and filed a Counterclaim against Claimants Mary Ellen and Dennis Hardin, Trustees for indemnification.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested \$10,921,000.00 in compensatory damages, \$271,000.00 in management fees, pre- and post-award interest, rescission and interest pursuant to California Corporations Code Section 25501, and costs, including attorney's fees and expert witness fees.

In the First Amended Statement of Claim, Claimants added a request for any profit made as a result of wrongdoing or mismanagement, with interest, pursuant to California Probate Code sections 16440(a)(2) and 16440(a)(3), and for damages pursuant to California Civil Code sections 1709, 3300, and 3333.

In the Joint Statement of Answer, Respondents requested dismissal of the Statement of Claim in its entirety and costs of arbitration and forum fees.

Respondent/Counter-Claimant U.S. Trust Company, N. A. requested dismissal of the First Amended Statement of Claim in its entirety and costs, including attorney's fees and forum fees.

In the Counterclaim, U.S. Trust Company, N. A. requested indemnification for the loss or liability associated with the defense of this action, including attorney's fees, filing fees, expert fees, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants filed their Statement of Claim on August 21, 2003. On February 11, 2004, all parties' counsel signed a Stipulation agreeing that Claimants may amend their Statement of Claim and that Claimants will dismiss all named Respondents with the exception of U.S. Trust Company, N.A. and will proceed solely against U.S. Trust Company, N.A. On February 11, 2004, Claimants filed their First Amended Statement of Claim naming only U.S. Trust Company, N.A. as a Respondent.

On November 12, 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 December 19, 2003, Respondents Charles Schwab & Co., Inc., U.S. Trust, U.S. Trust Company, N. A., and Maureen F. Gallogly's counsel signed a Waiver Agreement on their behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 28, 2004, Counter-Claimant U.S. Trust Company, N.A. and Counter-Claimant's 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 November 9, 2004, Counter-Respondents Mary Ellen and Dennis Hardin and Counter-Respondents' 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

After the Claimants presented their case at the evidentiary hearing, Respondent/Counter-Claimant U.S. Trust Company, N. A. made a motion for directed verdict. Claimants opposed this motion and, after due deliberation, the Panel denied the motion for directed verdict.

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/Counter-Claimant U.S. Trust Company, N. A. is liable to and shall pay Claimants the sum of \$875,000.00 in compensatory damages.
- 2) Respondent/Counter-Claimant U.S. Trust Company, N. A.'s counterclaim is denied in its entirety.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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	= \$ 600.00
Respondent U.S. Trust Company, N. A.'s Counterclaim filing fee	= \$ 600.00

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 & Co., Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 3,750.00
<u>Pre-Hearing Process Fee</u>	= \$ 750.00
Total Member Fees	= \$ 4,500.00

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:

3 Pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session	= \$ 1,350.00
Pre-hearing conferences:	
April 29, 2004	1 session
June 21, 2004	1 session
October 7, 2004	1 session
1 Pre-hearing conference session with the Panel @ \$ 1,200.00/session	= \$ 1,200.00
Pre-hearing conference:	
March 2, 2004	1 session
24 Hearing sessions @ \$ 1,200.00/session	= \$28,800.00
Hearings:	
October 25, 2004	2 sessions
October 26, 2004	2 sessions
October 27, 2004	2 sessions
October 28, 2004	2 sessions
October 29, 2004	2 sessions
November 1, 2004	2 sessions
November 2, 2004	2 sessions
November 3, 2004	2 sessions
November 4, 2004	2 sessions
November 5, 2004	2 sessions
November 9, 2004	2 sessions
November 10, 2004	2 sessions

Total Forum Fees	= \$31,350.00
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The Panel assessed \$ 31,350.00 of the forum fees to Respondent/Counter-Claimant U.S. Trust Company, N. A.

Fee Summary

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

Initial Filing Fee	= \$ 600.00
<u>Less payments</u>	= \$(1,800.00)
Refund Due Claimants	= \$(1,200.00)

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

Member Fees	= \$ 4,500.00
<u>Less payments</u>	= \$(3,750.00)
Balance Due NASD Dispute Resolution	= \$ 750.00

3. Respondent/Counter-Claimant U.S. Trust Company, N. A. is charged with the following fees and costs:

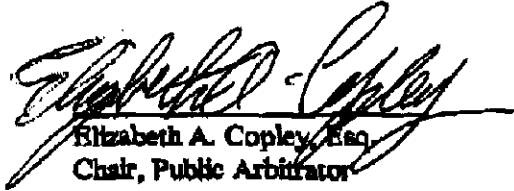
Counterclaim Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$31,350.00
Total Fees	= \$31,950.00
<u>Less payments</u>	= \$(1,800.00)
Balance Due NASD Dispute Resolution	= \$30,150.00

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

Elizabeth A. Copley, Esq.	-	Public Arbitrator, Presiding Chair
Barbara M. Zak, Esq.	.	Public Arbitrator
Larry Haugaard	.	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Elizabeth A. Copley, Esq.
Chair, Public Arbitrator

11/15/04
Signature Date

Barbara M. Zak, Esq.
Public Arbitrator

Signature Date

Larry Haugaard
Non-Public Arbitrator

Signature Date

11/15/04
Date of Service

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Signature Date

Larry Haugaard
Non-Public Arbitrator

Signature Date

11/16/04
Date of Service

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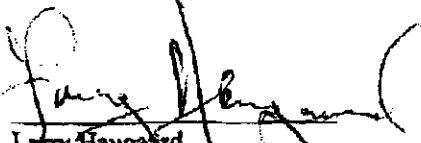
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Public Arbitrator

Signature Date



Larry Haugaard
Non-Public Arbitrator

11-15-04

Signature Date

11/15/04

Date of Service