

**Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Name of the Claimant  
Gary D. Epple

Case Number: 04-03553

Name of the Respondents  
Schwab Capital Markets, L.P., f/k/a Mayer &  
Schweitzer, Inc.; and TD Waterhouse Investor  
Services, Inc.

Hearing Site: Dallas, Texas

---

**NATURE OF THE DISPUTE**

Public Customer v. Member Firms

**REPRESENTATION OF PARTIES**

Claimant, Gary D. Epple, was present at the hearing and represented himself.

Respondent TD Waterhouse Investor Services, Inc. ("Waterhouse") was represented by Eric A. Michaels of the law firm of Hertz, Schram & Saretsky, P.C., of Bloomfield Hills, Michigan.

Respondent Schwab Capital Markets, L.P. f/k/a Mayer & Schweitzer, Inc. ("Schwab") was represented by Brandon K. Hemley, Esq., of Charles Schwab & Co., Inc., located in San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed: May 17, 2004.

Claimant signed the Uniform Submission Agreement: May 12, 2004.

Statement of Answer, Affirmative Defenses and Motion to Dismiss filed by Respondent Waterhouse on: July 22, 2004.

Respondent Waterhouse did not file a signed Uniform Submission Agreement.

Claimant's Response to Respondent Waterhouse's Motion to Dismiss filed: August 1, 2004.

Respondent Schwab's Motion to Decline Jurisdiction filed: October 4, 2004.

Respondent Schwab did not file a Statement of Answer or a signed Uniform Submission Agreement.

Claimant's Response to Respondent Schwab's Motion to Decline Jurisdiction filed: October 8, 2004.

### **CASE SUMMARY**

Claimant contended that Respondent Waterhouse, and its associates and employees were involved in a conspiracy to defraud and deprive him of monies. These allegations related to Respondent's failure to properly execute a sell order, resulting in the majority of the shares selling at a lower price than the marker price.

Respondent Waterhouse denied any wrongdoing and asserted the following defenses:

1. Claimant has failed to state a valid cause of action and has failed to state a valid cause of action; and,
2. Claimant's action is barred by the applicable statute of limitations.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$ 50,175.26
Punitive Damages	\$ 115,350.52
Interest	10% per annum beginning 1/12/99
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief if any:	Unspecified.

Respondent Waterhouse requested that the arbitrators dismiss the claim and award Waterhouse all costs and attorneys' fees associated with the defense of this matter.

### **OTHER ISSUES CONSIDERED AND DECIDED**

Respondents Waterhouse and Schwab did not file a properly executed submission to arbitration with NASD Dispute Resolution, but are required to submit to arbitration pursuant to the Code and are bound by the determination of the Panel on all issues submitted.

On October 11, 2004, at 11:00 A.M. (CST), a telephonic initial pre-hearing conference was held. At the beginning of the pre-hearing conference, Respondent Schwab objected to the Panel's jurisdiction. After hearing arguments of Claimant and counsel for Respondent and after due consideration of the pleadings filed in the matter, the Panel issued an Order dismissing Respondent Schwab from the proceeding. An initial per-hearing scheduling Order was entered on or about October 11, 2004.

During the hearing on the case-in-chief, Respondent Waterhouse waived its claim for attorney's fees and costs as against Claimant.

Upon Claimant's resting, counsel for Respondent Waterhouse made a Motion for Dismissal. Following argument on the Motion, and deliberation by the panel, Respondent's Motion to

dismiss was denied.

### **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. The Statement of Claim is hereby dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
3. Any and all relief not specifically addressed herein, including punitive and/or treble damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300
--------------------------	----------

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Schwab Capital Markets, L.P., f/k/a Mayer & Schweitzer, Inc. and TD Waterhouse Investor Services, Inc. are a party and member fees are assessed as follows:

<u>Schwab Capital Markets, L.P., f/k/a Mayer &amp; Schweitzer, Inc.</u>	
Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00

<u>TD Waterhouse Investor Services, Inc.</u>	
Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 Panel @ \$1,125.00	= \$ 1,125.00
---	---------------

Pre-hearing conference:      October 11, 2004      1 session

Two (2) Hearing sessions @ \$1,125.00      = \$ 2,250.00

Hearing Date:      September 14, 2005      2 sessions

Total Forum Fees      = \$3,375.00

The Panel has assessed \$1,125.00 of the forum fees to the Claimant, Gary D. Eppler, and the remaining \$2,250.00 of the forum fees to Respondent TD Waterhouse Investor Services, Inc.

**EEE SUMMARY**

Claimant Gary D. Eppler is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Schwab Capital Markets, L.P., f/k/a Mayer & Schweitzer, Inc. is solely liable for:

Member Fees	= \$ 2,450.00
Less payments	= \$ 5,200.00
Balance Refunded by NASD Dispute Resolution	= \$ 2,750.00

Respondent TD Waterhouse Investor Services, Inc. is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 7,450.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 2,250.00

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

NASD Dispute Resolution

Arbitration No. 04-03553

Award Page 5**ARBITRATION PANEL**

G. Maynard Green, JD - Public Arbitrator, Presiding Chairperson

J. Ken Lanyon - Public Arbitrator

Douglas W. Gill, CFP - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

G. Maynard Green, JD

Public Arbitrator, Presiding Chairperson

9-26-05

Signature Date

J. Ken Lanyon

Public Arbitrator

Signature DateDouglas W. Gill, CFP

Non-Public Arbitrator

Signature Date10/6/05 M/G

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

09/28/2005 16:01 FAX

NASD

008/008

NASD Dispute Resolution  
Arbitration No. 04-03553  
Award Page 5

**ARBITRATION PANEL**

G. Maynard Green, JD - Public Arbitrator, Presiding Chairperson  
J. Ken Lanyon - Public Arbitrator  
Douglas W. Gill, CFP - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
G. Maynard Green, JD  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
*J. Ken Lanyon*  
J. Ken Lanyon  
Public Arbitrator

\_\_\_\_\_  
3 OCTOBER 2005  
Signature Date

\_\_\_\_\_  
Douglas W. Gill, CFP  
Non-Public Arbitrator

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

\_\_\_\_\_  
10/6/05 *WAG*  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No. 04-03553  
Award Page 5

ARBITRATION PANEL

G. Maynard Green, JD - Public Arbitrator, Presiding Chairperson  
J. Ken Lanyon - Public Arbitrator  
Douglas W. Gill, CFP - Non-Public Arbitrator

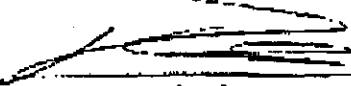
Concurring Arbitrators' Signatures

G. Maynard Green, JD  
Public Arbitrator, Presiding Chairperson

Signature Date

J. Ken Lanyon  
Public Arbitrator

Signature Date

  
Douglas W. Gill, CFP  
Non-Public Arbitrator

09.26.05  
Signature Date

10/6/05 MGN  
Date of Service (For NASD Dispute Resolution office use only)