

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Charles Schwab & Co., Inc., Claimant v. Withbert Payne and Rosemary Payne, individually and as Trustees of the Withbert and Rosemary Payne Living Trust, and Starcare International, Inc., Respondents

Withbert Payne and Rosemary Payne, individually and as Trustees of the Withbert and Rosemary Payne Living Trust, and Starcare International, Inc. Counter-Claimants v. Charles Schwab & Co., Inc., Counter-Respondent

Case Number: 04-03832

Hearing Site: Las Vegas, California

Nature of the Dispute: Member v. Customers
Customers v. Member

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent
(hereinafter referred to as "Claimant"):

Gregory M. Scanlon, Esq.
Charles Schwab & Co., Inc.
San Francisco, California

For Respondents/Counter-Claimants:
(hereinafter referred to as "Respondents")

Thomas J. Weiss, Esq.
Law Offices of Thomas J. Weiss
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: May 27, 2004

Claimant's Uniform Submission Agreement signed: May 27, 2004

Joint Statement of Answer and Counterclaim filed by Respondents: July 28, 2004

Respondent Withbert Payne's Uniform Submission Agreement signed: August 4, 2004

Respondent Rosemary Payne's Uniform Submission Agreement signed: August 8, 2004

Respondent Withbert and Rosemary Payne Living Trust's Uniform Submission Agreement signed: August 8, 2004

Respondent Starcare International, Inc.'s Uniform Submission Agreement signed: August 4, 2004

CASE SUMMARY

Pursuant to the December 8, 2003 and April 26, 2004 Orders of the Superior Court of Los Angeles compelling arbitration of No. BC 294245, *Payne et. al. v. Charles Schwab and Co., Inc.*, Claimant Charles Schwab & Co. Inc. filed a Statement of Claim to initiate the arbitration of claims asserted in the Los Angeles Superior Court action by Respondents Withbert Payne and Rosemary Payne, individually and as Trustees of the Withbert and Rosemary Payne Living Trust, and Starcare International, Inc.

Respondents Withbert Payne and Rosemary Payne, individually and as Trustees of the Withbert and Rosemary Payne Living Trust, and Starcare International, Inc. answered by submitting their First Amended Complaint filed in the Superior Court action as their response and counterclaim in this arbitration matter. In their counterclaim, Respondents alleged breach of written contract, fraudulent deceit, negligent misrepresentation, negligence, breach of fiduciary duty and unfair competition regarding primarily commissions and margin requirements. Various unspecified stock and stock options were involved.

RELIEF REQUESTED

Claimant denied Respondents allegations and requested an arbitration award declaring that it was not liable to and owed nothing to Respondents. Claimant also sought costs and forum fees.

Respondents, in their counterclaim, requested at least \$4 million in compensatory damages, \$28 million in punitive damages, injunctive relief, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Pursuant to the Los Angeles Superior Court Order in No. BC 294245 directing NASD to select an out of state location, NASD selected Reno, Nevada as the hearing location for this matter. During the initial pre-hearing conference held on October 25, 2004, the parties and arbitrators agreed to conduct the hearings in Las Vegas, Nevada.

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) Claimant's request for declaratory relief is granted. The Panel finds that Claimant is not liable to and owes nothing to Respondents.
- 2) Respondents' 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	= \$500.00
Respondents' 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	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,500.00</u>
Total Member Fees	= \$7,750.00

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:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00
Pre-hearing conference: October 25, 2004 1 session

(9) Hearing sessions @ \$1,200.00/session = \$10,800.00
Hearings: April 18, 2005 2 sessions
April 19, 2005 2 sessions
April 20, 2005 2 sessions
April 21, 2005 3 sessions

Total Forum Fees = \$12,000.00

1. The Panel assessed \$6,000.00 of the forum fees to Claimant.
2. The Panel assessed \$6,000.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 7,750.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$ 14,250.00
<u>Less payments</u>	<u>= \$ (5,950.00)</u>
Balance Due NASD Dispute Resolution	= \$ 8,300.00

2. Respondents are charged jointly and severally with the following fees and costs:

Counterclaim Filing Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$ 6,600.00
<u>Less payments</u>	<u>= \$ (0.00)</u>
Balance Due NASD Dispute Resolution	= \$ 6,600.00

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

William Urga	-	Public Arbitrator, Presiding Chair
Willy Nordwind, Jr.	-	Public Arbitrator
Steven A. Budin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



William Urga
Chair, Public Arbitrator

4/27/05

Signature Date

Willy Nordwind, Jr.
Public Arbitrator

Signature Date

Steven A. Budin
Non-Public Arbitrator

Signature Date

Date of Service


ARBITRATION PANEL

William Urga	-	Public Arbitrator, Presiding Chair
Willy Nordwind, Jr.	-	Public Arbitrator
Steven A. Budin	-	Non-Public Arbitrator

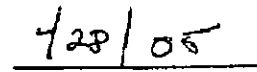
Concurring Arbitrators' Signatures

William Urga
Chair, Public Arbitrator

Signature Date



Willy Nordwind, Jr.
Public Arbitrator



Signature Date

Steven A. Budin
Non-Public Arbitrator

Signature Date

Date of Service

ARBITRATION PANEL

William Urga	-	Public Arbitrator, Presiding Chair
Willy Nordwind, Jr.	-	Public Arbitrator
Steven A. Budin	-	Non Public Arbitrator

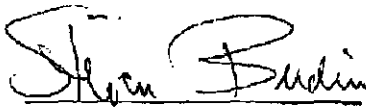
Concurring Arbitrators' Signatures

William Urga
Chair, Public Arbitrator

Signature Date

Willy Nordwind, Jr.
Public Arbitrator

Signature Date



Steven A. Budin
Non-Public Arbitrator

04/27/05

Signature Date

Date of Service