

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Charles D. Manning and Leni C. Manning, Claimants v. Scottrade, Inc., Rodger O. Riney, Randle D. Copeland, and Deric Schare, Respondents

Case Number: 04-06807

Hearing Site: Reno, Nevada

Nature of the Dispute: Customers v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimants:

Charles D. Manning
Pro Se
Minden, Nevada

For Respondents:

Sherri C. Strand, Esq.
Thompson Coburn
St. Louis, Missouri

CASE INFORMATION

Statement of Claim filed: September 20, 2004

Claimants' Joint Uniform Submission Agreement signed: September 20, 2004

Joint Statement of Answer filed by Respondents Scottrade, Inc., Rodger O. Riney, Randle D. Copeland, and Deric Schare: November 18, 2004

Respondent Deric Schare's Uniform Submission Agreement signed: October 12, 2004

Joint Uniform Submission Agreement signed by Respondents Scottrade, Inc. and Randle D. Copeland: October 12, 2004

CASE SUMMARY

Claimants alleged violation of their rights under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States and violation of the United States Code, Code of Federal Regulations, and the Internal Revenue Code. Claimants' allegations involved an alleged improper levy of funds from Claimants' securities account.

Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$56,000,000.00 in compensatory damages, \$100,000,000.00 in punitive damages, a declaratory judgment that Respondents violated Claimants' rights under the Fourth, Fifth, and Fourteenth Amendments to the Constitution of the United States, and costs, including attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Rodger O. Riney did not file with NASD Dispute Resolution a properly executed submission agreement, but he is required to submit to arbitration pursuant to NASD's Code of Arbitration Procedure, and, having answered the claim, he is bound by the determination of the Panel on all issues submitted.

On November 18, 2004, Respondents filed a Motion to Dismiss All Claims in the Statement of Claim and Memorandum in Support of the Motion to Dismiss All Claims in the Statement of Claim. On December 7, 2004, Claimants filed a Motion Not to Dismiss All Claims Asserted in Respondents' Motion to Dismiss in response to Respondents' Motion to Dismiss All Claims in the Statement of Claim. On March 22, 2005, Respondents filed a Reply Memorandum. On May 10, 2005, a telephonic pre-hearing conference was held in which the Panel heard oral argument from the parties regarding Respondents' Motion to Dismiss All Claims in the Statement of Claim. After due deliberation, the Panel granted the motion.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS AND CONCLUSIONS

Claimants' Claims:

Claimants asserted that Respondents acted wrongfully in honoring an Internal Revenue Service (hereinafter "IRS") levy that was received by Respondents on or about July 1, 2003. At that time, Claimants maintained a brokerage account with Respondent Scottrade, Inc. that had a small cash balance and a few stocks. The total amount paid by Respondent Scottrade, Inc. to the IRS in response to the notice of levy was \$1,471.84. Claimants do not deny that on the date the notice of levy was received by Respondent Scottrade, Inc. and on the date that Respondent Scottrade, Inc. paid \$1,471.84 to the IRS, Claimants owed the taxes set forth in the notice of levy.

Claimants contend that they never received notice that the IRS was going to levy their brokerage account although they admit that they received notice from the IRS advising them that it was going to place a lien on their house. Claimants also allege that the notice of levy was defective in that the reverse side of the notice omitted the provisions of section 6331(a) of the Internal Revenue Code of 1986 (hereinafter "the Code"). They also contend that the levy was

unenforceable on the grounds that it was not authorized by a prior judicial order and because there was no evidence that Kathi Parker, the Revenue Officer who issued the notice of levy, had been delegated such responsibility by the Secretary of the Treasury.

Respondents' Response to Claimants' Claims:

Respondents filed an Answer to Claimants' Statement of Claim in which Respondents admitted that they had complied with the notice of levy and had turned over \$1,471.84 to the IRS and that in doing so, they had acted in accordance with section 6332 of the Code as well as other Code sections. Respondents further stated that they had taken these actions with the knowledge that by letter dated July 3, 2003, Claimants had informed Respondents that the IRS had failed to issue "formal notice," and Respondents had replied that they nevertheless had a duty to comply with the notice of levy within twenty one days of receipt of the notice.

Respondents, relying on the express terms of the customer account agreement, also advised Claimants by letter dated July 18, 2003 that Respondents were closing Claimants' account. Thereafter, Respondents remitted the \$1,471.84 to the IRS and the proceeds realized from the sale of the remaining positions in the account to Claimants (\$2,511.05). Respondents denied any liability to Claimants under any of the theories asserted by Claimants in support of their claim.

Respondents' Motion to Dismiss:

Claimants initially asserted their claims against Respondents by filing suit with the federal district court for the District of Nevada. That court dismissed the action and ordered Claimants to proceed against Respondents in arbitration, which Claimants did. In the context of this arbitration proceeding, Respondents filed a Motion to Dismiss All Claims Asserted in Claimants' Statement of Claim (hereinafter "Motion to Dismiss"). The basis for the Motion to Dismiss is section 6332(e) of the Code and Treas. Reg. Sec. 301-6332-1(c), copies of which are attached to the motion as Exhibit F. At the initial pre-hearing conference, it was agreed that Respondents' Motion to Dismiss should be scheduled for a separate hearing on May 10, 2005 at 10:00 a.m. and that if the motion were denied, then an evidentiary hearing would be held in Reno, Nevada on June 14 and 15, 2005. About two-thirds of the way through the hearing of May 10, 2005, arbitrator Howard A. Buchler was called away on an emergency. Claimants and Respondents agreed that the remaining arbitrators could proceed to decide Respondents' Motion to Dismiss. Both Claimants and Respondents were provided with the opportunity to present arguments, both legal and factual, in support of their positions, which were set forth in their pleadings, memoranda, and replies thereto. Claimants also submitted a motion to oppose the Motion to Dismiss. Upon the conclusion of the parties' oral arguments, which were recorded, the remaining arbitrators, Mr. Furth and Mr. Nordwind, adjourned and went into executive session, which executive session was not recorded. Later, Mr. Buchler listened to the tape of the oral arguments, and all three arbitrators made the following ruling unanimously.

AWARD

After considering the pleadings, Respondents' Motion to Dismiss All Claims in the Statement of Claim, the parties' submissions in connection with this motion, and oral argument by the parties, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are dismissed with prejudice in their entirety pursuant to Respondents' Motion to Dismiss All Claims Asserted in Claimants' Statement of Claim. The Panel agrees with Respondents that Claimants' Statement of Claim fails to state a claim as a matter of law.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Randle D. Copeland, Deric Schare, and Rodger O. Riney's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondents Randle D. Copeland, Deric Schare, and Roger Riney must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, which governs this matter as the instant arbitration proceeding was filed on September 20, 2004, the arbitration panel finds that the claims asserted by Claimants are clearly erroneous.

- 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	= waived
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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 Scottrade, Inc. is a party, and the following fees are assessed:

Member Surcharge	= \$ 3,750.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,500.00
Total Member Fees	= \$10,000.00

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:

Two (2) pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: January 28, 2005 1 session	
May 10, 2005 1 session	
Total Forum Fees	= \$ 2,400.00

1. The Panel assessed \$1,200.00 of the forum fees jointly and severally to Claimants Charles D. Manning and Leni C. Manning.
2. The Panel assessed \$1,200.00 of the forum fees jointly and severally to Respondents Scottrade, Inc., Rodger O. Riney, Randle D. Copeland, and Deric Schare.

Fee Summary

1. Claimants Charles D. Manning and Leni C. Manning are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,200.00
<u>Less payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 1,200.00

2. Respondent Scottrade, Inc. is charged with the following fees and costs:

Member Fees	= \$ 10,000.00
<u>Less payments</u>	= \$(10,000.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Scottrade, Inc., Rodger O. Riney, Randle D. Copeland, and Deric Schare are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 1,200.00
<u>Less payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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.

NASD Dispute Resolution
Arbitration No. 04-06807
Award Page 6 of 6


ARBITRATION PANEL

Willy Nordwind, Jr., Esq.
Helmut F. Furth, Esq.
Howard A. Buchler

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures



Willy Nordwind, Jr., Esq.
Chair, Public Arbitrator



Signature Date

Helmut F. Furth, Esq.
Public Arbitrator

Signature Date

Howard A. Buchler
Non-Public Arbitrator

Signature Date



Date of Service

NASD Dispute Resolution
Arbitration No. 04-06807
Award Page 6 of 6

ARBITRATION PANEL

Willy Nordwind, Jr., Esq.
Helmut F. Furth, Esq.
Howard A. Buchler


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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Willy Nordwind, Jr., Esq.
Chair, Public Arbitrator

Signature Date



Helmut F. Furth, Esq.
Public Arbitrator

May 17, 2005

Signature Date

Howard A. Buchler
Non-Public Arbitrator

Signature Date

5/17/05

Date of Service

NASD Dispute Resolution
Arbitration No. 04-06807
Award Page 6 of 6

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Helmut F. Furth, Esq.
Howard A. Buchler

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Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Willy Nordwind, Jr., Esq.
Chair, Public Arbitrator

Signature Date

Helmut F. Furth, Esq.
Public Arbitrator

Signature Date


Howard A. Buchler
Non-Public Arbitrator

Signature Date

5/16/05
Date of Service

5/17/05
Date of Service