

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

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In the Matter of the Arbitration Between:  
Xiu Ying Wang, Claimant v. Charles Schwab & Co., Inc., Respondent

Case Number: 05-02170

Hearing Site: San Francisco, California

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

James Jay Seltzer, Esq.  
Thomas H. Porter, Esq.  
Law Offices of James Jay Seltzer  
Emeryville, California

For Respondent:

Curt H. Mueller, Esq.  
Charles Schwab & Co, Inc.  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: April 22, 2005

Claimant's Uniform Submission Agreement signed: April 13, 2005

Statement of Answer filed by Respondent: June 15, 2005

Respondent's Uniform Submission Agreement signed: June 15, 2005

**CASE SUMMARY**

Claimant alleged violation of various securities rules and regulations, negligence, breach of contract, the implied covenant of good faith and fair dealing, and breach of fiduciary duty. Claimant's allegations involved shares of Lucent stock and cash that were erroneously transferred to a wrong account.

Respondent admitted to the erroneous transfer of Lucent stock and cash to a wrong account but denied that any damages are owed to Claimant because Respondent corrected the transfer error. Respondent also asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory damages, rescissionary damages, lost opportunity costs, model portfolio damages, punitive damages, pre-judgment interest, and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety and costs.

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

On February 22, 2006, Respondent filed a Motion to Dismiss Claimant's Statement of Claim. On March 3, 2006, Claimant filed an Opposition. On March 3, 2006, Respondent filed a Reply in support of its Motion to Dismiss. On March 16, 2006, the Panel conducted a conference call with the parties to hear oral argument on the motion. After due deliberation, the Panel elected to defer the decision on the motion to allow for further discovery. On April 3, 2006, the Panel conducted a second conference call with the parties on the motion and, after due deliberation, decided to grant Respondent's Motion to Dismiss.

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 and oral argument presented by the parties, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are dismissed with prejudice.
- 2) Respondent is charged with all NASD forum fees that have accrued in this matter.
- 3) Except as noted above, 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	= \$ 250.00
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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 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>= \$ 2,200.00</u>
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

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

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided on the papers. 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) decision on discovery-related motions on the papers with the Chairperson @ \$200.00	= \$ 200.00
Claimant submitted one discovery-related motion	

Three (3) pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$3,000.00
Pre-hearing conferences:	
October 13, 2005	1 session
March 16, 2006	1 session
April 3, 2006	1 session

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<b>Total Forum Fees</b>	<b>= \$3,200.00</b>
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The Panel assessed \$3,200.00 in forum fees to Respondent.

**Fee Summary**

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

Initial Filing Fee	= \$ 250.00
<u>Less payments</u>	<u>= \$(1,250.00)</u>
<b>Refund Due</b>	<b>= \$(1,000.00)</b>

2 Respondent is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	<u>= \$ 3,200.00</u>
Total Fees	= \$ 7,650.00
<u>Less payments</u>	<u>= \$(4,450.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,200.00</b>

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**

Fred D. Butler	-	Public Arbitrator, Presiding Chair
Philip Aaron Tymon	-	Public Arbitrator
Matthew J. Howard	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Fred D. Butler  
Chair, Public Arbitrator

4/3/06  
Signature Date

\_\_\_\_\_  
Philip Aaron Tymon  
Public Arbitrator

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

\_\_\_\_\_  
Matthew J. Howard  
Non-Public Arbitrator

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

3/4/06  
Date of Service

**ARBITRATION PANEL**

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Philip Aaron Tymon	-	Public Arbitrator
Matthew J. Howard	-	Non-Public Arbitrator

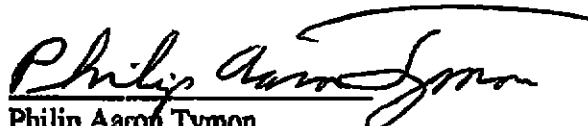
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Fred D. Butler  
Chair, Public Arbitrator

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Signature Date

  
Philip Aaron Tymon  
Public Arbitrator

4/3/06  
Signature Date

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Matthew J. Howard  
Non-Public Arbitrator

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Matthew J. Howard  
Non-Public Arbitrator



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Signature Date

3/4/06  
Date of Service  
(NASD Use Only)