

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

William F. McDonald, Claimant v. Charles Schwab & Co., Inc., Respondent

Case Number: 05-03680

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

William F. McDonald
In Propria Persona
Los Angeles, California

For Respondent:

Katherine Nathan, Esq.
Charles Schwab & Co., Inc.
San Francisco, California

CASE INFORMATION

Statement of Claim filed: July 12, 2005

Claimant's Uniform Submission Agreement signed: July 21, 2005

Statement of Answer filed by Respondent: August 29, 2005

Respondent's Uniform Submission Agreement signed: August 29, 2005

CASE SUMMARY

Claimant alleged failure to fulfill a limit order involving transactions in shares of Professional BBK stock.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested approximately \$14,000.00 in compensatory damages.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety, costs, and that all arbitration costs be assessed against Claimant.

FINDINGS AND CONCLUSIONS

Claimant failed to produce any evidence that he suffered any damages as a result of the Respondent's alleged acts, for which the law allows recovery against Respondent.

It was undisputed that on or about January 3, 2005, Claimant placed a "limit" order for the purchase of approximately 5,700 shares of PBBK, at \$17.50 per share or less, directly with Respondent. It was undisputed that on January 7, 2005, Westpac (which is the third-party administrator of the retirement plan from which Claimant directed Respondent to take the funds for the limit order) canceled the Order by calling Respondent directly. No portion of the "limit" order was filled between January 3, 2005 and January 7, 2005. No evidence was presented by Claimant to suggest that Respondent could have filled any portion of the "limit" order between January 3, 2005 and January 7, 2005.

Claimant asserts that he did not learn about the cancellation of the limit order until January 19, 2005. Claimant asserts that Respondent had no right to cancel the order. Further, Claimant asserts that it was wrong for Respondent not to inform Claimant of the cancel order request. Claimant also asserts that the stated reason for the canceled order, to wit: Claimant did not have sufficient cash in the account to fulfill the order, was not an appropriate basis for canceling the limit order.

The Arbitrator asked Claimant directly if he had any evidence that he suffered any damage between January 7, 2005 and January 19, 2005 and Claimant responded "no." What is more, Claimant testified that he had not suffered any damages during the period of January 7, 2005 and January 19, 2005. Claimant admitted that he did not have any evidence to suggest that Respondent could have filled any portion of the "limit" order between the period of January 7, 2005 and January 19, 2005, even if the order had not been canceled. Claimant admitted that he did not have any evidence to suggest that he could have bought PBBK at \$17.50 per share or less during the period of January 3, 2005 and January 19, 2005.

Instead, Claimant testified and argued that he suffered damage when he purchased PBBK at prices above \$17.50 per share on or about January 29, 2005. But, Claimant did not present any evidence or argument to suggest that he or Respondent could have bought PBBK at any time prior to January 29, 2005 at a price of \$17.50 per share or less.

Furthermore, Claimant admitted that it was his decision not to buy PBBK between January 19, 2005 and January 29, 2005. Claimant admitted that he acted out of anger and emotion on January 19, 2005 and that such anger and emotion was the reason he did not request Respondent to renew the order or place a new one for 10 days.

In sum, the claim that damages were suffered 10 days after learning of the cancellation of the order does not warrant liability because there was no evidence that even if Respondent had not canceled the order that PBBK could have been bought at \$17.50 per share or less. Since Claimant admitted that he did not suffer any damage up to January 19, 2005, and since it was, as Claimant so testified, Claimant's decision not to attempt to place a new order for PBBK for 10 days after learning of the cancellation, there is no basis for liability after January 19, 2005 here.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing on March 22, 2006, Respondent made an oral motion requesting travel and similar expenses. Claimant opposed the motion.

AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) Respondent's request for travel and similar expenses is denied.
- 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 *NASD Code of Arbitration Procedure* (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	= \$ 125.00
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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	= \$ 425.00
Total Member Fees	= \$ 425.00

Forum Fees and Assessments

The Arbitrator 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 Arbitrator. The following fees are assessed:

One (1) Pre-hearing conference session with the Arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: October 21, 2005 1 session

Two (2) Hearing sessions @ \$450.00/session = \$ 900.00
Hearings: March 22, 2006 2 sessions

Total Forum Fees = \$1,350.00

The Arbitrator assessed \$1,350.00 of the forum fees to Claimant.

Fee Summary

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

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$1,350.00
Total Fees	= \$1,475.00
<u>Less payments</u>	= \$ (600.00)
Balance Due NASD Dispute Resolution	= \$ 875.00

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

Member Fees	= \$ 425.00
<u>Less payments</u>	= \$ (600.00)
Refund Due Respondent Charles Schwab & Co., Inc.	= \$ (175.00)

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.

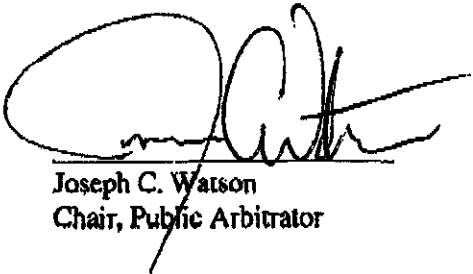
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ARBITRATOR

Joseph C. Watson

Public Arbitrator, Presiding Chair

Arbitrator's Signature



Joseph C. Watson
Chair, Public Arbitrator

3/24/06
Signature Date

3/24/06
Date of Service