

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Charles Schwab & Co., Inc.

Claimant/Counter-
Respondent

} Case #88-00840

vs.

} Award

Sandra and Eldon Johns

Respondents/
Counter-Claimants

Heard Before the Arbitration Panel:

Joseph J. Aron

CASE SUMMARY

Claimant alleged that Respondents deposited 4,400 shares of Vast, Inc., a Minnesota corporation, into their Schwab account. Claimant alleged that its computer mistakenly coded the deposit as TRC Companies, but that the actual shares owned by Respondents (Vast) had no value. Claimant alleged that Respondents put in an order to sell 3,400 shares of TRC Companies, Inc., stock, that said order was filled and Claimant issued Respondents a check in the amount of \$51,664.15. Claimant alleged that its transfer agent subsequently discovered the error and that Respondents were informed of the error. Claimant alleged that it executed an order to buy back 3,400 shares of TRC Companies for the purpose of covering the short position in Respondents' account. Claimant alleged that the error was made in good faith, that Respondents were unjustly enriched and converted funds. Claimant alleged that Respondents became indebted to Claimant for \$51,664.15, that \$22,660.00 of that sum has been paid, and that no settlement was entered into between Claimant and Respondents.

Respondents alleged that they delivered a stock certificate for 4,400 shares of Vast, Inc., a Minnesota corporation, to Claimant, for deposit in Respondents' margin/short account at Claimant and was advised by Claimant that the name of the issuer had changed to TRC Companies, Inc. Respondents claimed that Claimant verified the name change to Respondents and credited Respondents' account with 4,400 shares of TRC Companies, Inc. Respondents alleged they instructed Claimant to sell 3,400 shares of TRC Companies, Inc., and to continue to retain 1,000 shares of TRC in Respondents' margin/short account. Respondents alleged that Claimant sold the 3,400 shares of TRC Companies and credited Respondents' account with the net proceeds of \$51,664.00. Respondents alleged that they reasonably relied on Claimant's

representations that Respondents' shares of stock in Vast, Inc. were shares of stock in TRC Companies, Inc., and that Claimant knew or should have known that Respondents would be reasonably induced to rely on Claimant's representation. Respondents alleged that they have been damaged by having to unexpectedly liquidate investments and other assets to Respondent's detriment and damage in order to pay for additional shares in TRC Companies, Inc.; that Claimant and Respondents entered into a settlement whereby

Respondents agreed to pay Claimant; and that Claimant agreed to accept from Respondents the sum of \$22,660 in full settlement of the obligation alleged in the claim; and that Respondents did in fact pay to Claimant the sum of \$22,660. As counterclaims, Respondents alleged 1) conversion by Claimant, 2) that Respondents consented to the purchase of 3,400 shares of TRC Companies by Claimant and paid \$22,660 to Claimant under the duress of Claimant, 3) fraud and breach of fiduciary relationship, 4) violation of Section 10 of the Federal Securities Exchange Act of 1934 and Rule 10b-5, 5) violation of section 25400(d) and 25500 of the California Securities Law of 1968, 6) violation of section 17 of the Federal Securities Act of 1933.

RELIEF REQUESTED

Claimant requests an award against Respondents for:

1. \$29,063.64 principal.
2. Accrued interest.
3. Punitive damages for conversion in the amount of \$150,000.00.
4. Attorneys' fees in the amount of \$7,460.00.
5. Expenses in the amount of \$526.00.
6. Such other and further relief as deemed proper.

Respondents request:

1. Dismissal of the claim.
2. Return of the \$22,660.00 plus interest from November 10, 1987.
3. That Claimant release to Respondents a minimum of 1,000 and a maximum of 4,400 shares of Vast, Inc., held in Respondent's account.
4. Costs, including attorneys' fees.
5. Damages for compensatory and consequential damages according to proof.
6. Such other and further relief as the Arbitrators may be deemed proper.

AWARD

The claim in this arbitration was filed on April 28, 1988. On June 20, 1989, in Los Angeles, California, the arbitrators heard the controversy as set forth in submission to arbitration signed by Claimant/Counterrespondent on March 2, 1988 and by Respondents/Counter-claimants on January 24, 1989. The hearing consisted of two sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents are liable and shall pay to Claimant the sum of Seven Thousand Five Hundred Dollars (\$7,500.00). Said liability is joint and several.
2. Claimant Schwab & Co., is directed to unfreeze the account of Respondents with Schwab and return to Respondents a stock certificate for 4,400 shares of Vast, Inc., a Minnesota corporation.
3. Each and every counterclaim of Respondents is dismissed, except for the claim relating to the return of the Vast, Inc. shares.
4. The parties shall each bear their respective costs.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$900.00 filing fee previously deposited by the Claimant. Further, pursuant to Section 43, Claimant is assessed forum fees in the amount of \$1,000, to be paid directly to the National Association of Securities Dealers, Inc.

Date Served: 07/19/89

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