

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Among

Philip C. Armetta,

Claimant

vs.

Charles Schwab & Co. and
Linda DeWalde,

Respondents

Case #88-01838

Award

CASE SUMMARY

Claimant alleges that the sale of January 19, 1987, was excessive, against his instructions, and executed with the primary purpose of generating commissions. Claimant further alleges that the transaction was done in violation of 10(b) of the Exchange Act and Rule 10b-5, Rules of Fair Practice of the NASD regarding equitable principles of trade, the sections prohibiting manipulative, deceptive or fraudulent device or contrivance in effecting transactions, of suitability requirements, and that Respondents made improper use of customer's funds or securities. Claimant also alleges misrepresentation, breach of fiduciary duties, negligence by the Respondents as a proximate cause of the damages sustained, breach of contract and RICO violations. Claimant further claims damages of \$296,717.39 arising out of the purchase of 4,000 shares of IBM securities needed to cover the short position created by the January 19, 1987 sale for failure to sell 500 shares of Ogden Corp. expeditiously to close Claimants account as instructed.

Respondents deny liability and move to dismiss the claims. Respondents allege that Claimant attempted to place an order to sell securities at 122 per share or at a stop loss price of 120 per share. Respondents further allege that DeWalde advised Claimant that it was not the firm's policy to execute alternative orders but that he could place two separate orders and if one order was executed, he would be responsible for cancelling the other order or he would have to cover the second order if it was executed. Respondents also contend that Claimant assumed the risk and was negligent in failing to cancel the second order before it was executed.

RELIEF REQUESTED

Claimant requests an award of \$296,717.39, which includes \$284,592.39 in treble damages, \$11,375.00 in attorney's fees and \$750.00 in costs pursuant to U.S.C. Section 1964(c). Respondents move to dismiss the claim.

AWARD

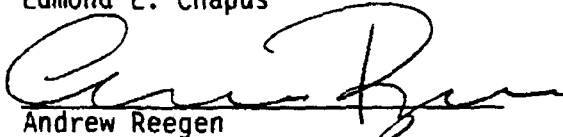
On October 3, 1989, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by the Claimant, Philip C. Armetta, on May 31, 1988 and by the Respondent, Charles Schwab & Co. and Linda DeWalde, on July 19, 1988 and July 25, 1988, respectively. The hearing was conducted in New York, New York and consisted of two sessions. The arbitration panel, having considered the pleadings, the testimony, the evidence presented at the hearing, and Respondents' Motion to Dismiss and Claimant's Reply thereto, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondents' Motion to Dismiss is denied.
2. Respondents are hereby jointly and severally liable to the Claimant in the amount of Sixty Thousand, Four Hundred and Thirty-One Dollars and Zero Cents (\$60,431.00) without interest.
3. The claim for damages arising out of the sale of Claimant's 500 shares of Ogden Corp is denied.
4. The claim for treble damages is denied.
5. The parties shall each bear their respective costs, including attorneys' fees.
6. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund \$750.00 of the \$750.00 filing fee previously deposited by the Claimant, less \$14.00 for xeroxing documents, and shall assess Respondent, Charles Schwab & Co., \$1500.00 in forum costs which shall be payable to the NASD.

ARBITRATORS CONCURRING


Edward M. Sillis


Edmond E. Chapus


Andrew Reegen