

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )  
 )  
Charles Schwab & Co., Inc.. )  
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 ) Claimant, )  
 ) Case #88-02223  
vs. ) Award  
 )  
Peter Arcona and Janet Arcona. )  
 ) Respondents. )  
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Heard before the members of the Arbitration Panel:

Mark Perry, Esq.  
Ms. Elizabeth L. Clark  
Mr. S. Richard Savage

On May 17, 1989, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on June 28, 1988 and not signed by Respondents Peter and Janet Arcona as required pursuant to Section 12(a) of the NASD Code of Arbitration Procedure ("Code"), Respondents Peter and Janet Arcona being customers who duly executed a written agreement to arbitrate (as evidenced on Page Four (4) of Claimant's Exhibit #4). Having considered the pleadings, the testimony, and the evidence presented at the hearing and Peter and Janet Arcona having failed to appear at the hearing, notwithstanding their knowledge of this arbitration as evidenced by Arbitrator's Exhibit #2(a) through 2(i), this panel has determined in full and final resolution of the issues submitted for determination as follows:

1. Jurisdiction exists by virtue of the Agreement to Arbitrate evidenced on Page Four (4) of Claimant's Exhibit #4 executed by Respondents and pursuant to Section 12(a) of the Code.
2. Although the reasons are set forth in the record of proceedings for finding of adequate notice to Respondents Peter and Janet Arcona, the reasons will again be set forth here. The NASD, Inc. served Peter and Janet Arcona by certified mail with the Statement of Claim in this matter and has made every attempt to locate and serve these Respondents with Notice of this hearing as demonstrated by the following record evidence.
  - a). July 18, 1988. Service of Claim on Peter and Janet Arcona was sent to P.O. Box 1578 in Marathon, Florida (while no receipt was returned to the NASD, Inc. neither was this mail ever returned as unclaimed as evidenced by Arbitrators Exhibit #2(a)).

- b). September 14, 1988. Notice of Failure to file an Answer sent to Respondents Peter and Janet Arcona at Marathon, Florida address (returned as unclaimed as evidenced by Arbitrator's Exhibit #2(b)).
- c). December 14, 1988. Hearing Confirmation Letter sent to Respondents Peter and Janet Arcona at Marathon, Florida address (returned, "box closed" as evidenced by Arbitrator's Exhibit #2(c)).
- d). January 11, 1989. Hearing Confirmation Letter sent to Respondents Peter and Janet Arcona at 306 Alamanda Duck Key, Florida (returned, "authorized time for forwarding expired" as evidenced by Arbitrator's Exhibit #2(d)).
- e). January 11, 1989. Hearing Confirmation Letter sent to Respondents Peter and Janet Arcona at Apartado 8212 Panama 7, Panama by Registered Mail (returned, "address insufficient" as evidenced by Arbitrator's Exhibit #2(e)).
- f). April 13, 1989. Case Packet including the Hearing Advance Sheet setting forth date, time, and place of the hearing sent to Respondent Janet Arcona at Marathon, Florida address (returned, "box closed" as evidenced by Arbitrator's Exhibit #2(f)).
- g). April 13, 1989. Case Packet including the Hearing Advance Sheet sent to Respondent Peter Arcona at Marathon, Florida address (returned, "box closed" as evidenced by Arbitrator's Exhibit #2(g)).
- h). May 4, 1989. Respondents Peter and Janet Arcona requested a continuance by Western Union Telegram. Included in the Telegram was an address for Respondents of 126 Sapodilla Dr. Islamorada, Florida. May 10, 1989. Notice of the Panel's denial of Respondents' request for a continuance and a request for Respondents' phone number was sent by Western Union Mailgram to the Respondents' Islamorada address (this mail was never returned as unclaimed nor was any response ever received as evidenced by Arbitrator's Exhibit #2(h)).

- i). May 12, 1989, Case Packet including the Hearing Advance Sheet setting forth the date, time and location of the hearing along with a Memo informing the Respondents of the Panel's denial of their request for a continuance was sent via Federal Express Overnight Delivery (for delivery on Saturday, May 13, 1989) to Respondents' Islamorada, Florida address (this mail was never returned as unclaimed and is evidenced in Arbitrator's Exhibit #2(i)).
- j). May 2, 1989, Statement of Claim, Notice of Hearing and Hearing Advance Sheet were personally served on Respondents by Gary A. Crep, a private investigator employed by Claimants, at Respondents' Islamorada, Florida address (as evidenced by Claimant's Exhibit #1).
- 3. Respondents Peter and Janet Arcona shall be and hereby are liable, jointly and severally, and shall pay to the Claimants the amount of Twenty-Four Thousand Eight Hundred Eighty-Four and 96/100 (\$24,884.96) Dollars, inclusive of interest at a rate of nine percent (9%) per annum.
- 4. Additionally, Respondents Peter and Janet Arcona shall be and hereby are liable jointly and severally, and shall pay to the Claimant the further amount of Three Thousand and 00/100 (\$3,000.00) Dollars for attorney's Fees pursuant to the agreement signed by Respondents and evidenced on Page Two (2) of Claimant's Exhibit #2.
- 5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Claimant Charles Schwab & Co., Inc. shall be and hereby is assessed forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars. The National Association of Securities Dealers, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant for such forum fees.

Dated: May 24, 1989

MEMORANDUM

TO: Award File

FROM: Alan J. Foxman  
Staff Attorney

DATE: July 11, 1989

RE: NASD Arbitration 88-02223  
Charles Schwab & Co., Inc. vs. Peter Arcona and Janet Arcona

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Pursuant to the May 10, 1989 amendments to the NASD Code of Arbitration Procedure, a case summary is required of all cases pending as of May 10, 1989. The following case summary was prepared by NASD Staff after the hearing but prior to the rendition of the Award. Consequently, this case summary is not formally a part of the Award.

CASE SUMMARY

This claim was filed with the NASD, Inc. on July 12, 1988. The hearing was conducted in Florida, with the total of One (1) session. Claimant, Charles Schwab & Co., Inc. ("Schwab") alleged that Respondents' Peter and Janet Arcona ("the Arcona's") have an unsecured debit balance in their margin account which remains due and owing. Specifically, Schwab alleges that the Arcona's account was liquidated after the market crash of October 19, 1987 left a negative balance in Respondents account. The Arcona's failed to file an answer to the claim and did not appear at the hearing.

AJF:lc