

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Charles Schwab & Co., Inc.

Claimant

vs.

Stacy Allyn Germic

Respondent,  
Counter-  
Claimant &  
3rd Party  
Claimant

vs.

Charles Dangerfield, Rob  
Difuria, Steve Roche, Michael  
Burton and Marsha Brown

3rd Party  
Respondents

AWARD

CASE NO. 88-02346

SUMMARY OF ISSUES

This case was filed on April 3, 1989. Claimant Charles Schwab & Co., Inc. ("SCHWAB") alleges that Stacy Allyn Germic ("GERMIC") opened a margin account with their brokerage and, by contract, agreed to pay any debit balance in the account created by GERMIC's trading activity. September 21, 1987, GERMIC's account had a debit balance of \$13,471.87. Demand had been made for payment, but the debit balance remains unpaid.

GERMIC answers the claim by raising the affirmative defense of comparative negligence and that the claim fails to state facts sufficient to constitute a cause of action.

By way of a counter-claim, GERMIC alleges that Counter-Respondent SCHWAB and 3rd Party Respondents Charles Dangerfield ("DANGERFIELD"), Rob Difuria ("DIFURIA"), Steve Roche ("ROCHE"), Michael Burton ("BURTON") and Marsha Brown ("BROWN") failed to "know their customer" and let GERMIC's account generate losses in excess of an agreed upon amount.

GERMIC also alleges that SCHWAB failed to inform her of the state of the options activity in her account, thereby creating a loss which resulted in the debit balance claimed.

SCHWAB answers the counter-claim by alleging that GERMIC represented that she had three years investment experience and also represented that "speculation" was her principal investment objective. It is also alleged that the account was designated "CWC" indicating that when and as the customer determined appropriate, the "customer will call" for information about her account.

By way of affirmative defense, SCHWAB states that the losses in the account were attributable to GERMIC's own negligence, lack of due care and/or assumption of the risk.

#### DAMAGES AND RELIEF REQUESTED

Claimant SCHWAB seeks recovery of \$13,471.87, accrued interest from September 21, 1987 at the legal rate, contractual attorneys' fees according to proof and costs.

GERMIC seeks to recover all money lost in the account according to proof but not less than \$150,000.00 and accrued interest.

SCHWAB seeks dismissal of the counter-claim in its entirety, attorneys' fees and costs.

#### PROCEDURAL SUMMARY

This claim was filed on July 19, 1988 and an answer and counter-claim was filed on October 15, 1988. An answer to the counter-claim was served on Respondent July 24, 1989.

A hearing date was set for October 19, 1989. On July 26, 1989, Respondent requested a continuance for medical reasons. The continuance was granted.

On November 22, 1989, Respondent was notified that the hearing would be held on March 13, 1990. Final notice was served on all parties on December 23, 1989. Request for a continuance was received telephonically by the National Association of Securities Dealers, Inc. ("NASD") from Joel King, who represented himself as the Respondent's attorney. He was instructed to put the request in writing and submit backup documentation for the panel to review.

On March 12, 1990, a three page telefax was received by the NASD stating that Respondent would not be attending the hearing due to medical reasons and the Respondent/Representative had a court date scheduled on the day of the hearing.

The arbitrators were contacted by telephone and informed of Respondent's request. The panel denied the motion to continue. Respondent was left a message on her answering machine apprising her of the decision.

Respondent did not appear at the hearing nor was any further contact made.

#### DAMAGES AND RELIEF AWARDED

On March 13, 1990 in Los Angeles, California, the undersigned arbitrators heard the controversy in one session between the parties as set forth in submissions to arbitration signed by Claimant and Counter-Respondent SCHWAB on July 18, 1988, by 3rd Party Respondents DANGERFIELD on March 12, 1990, BROWN on February 1, 1989, BURTON on April 10, 1989, ROCHE on April 10, 1989, DIFURIA on April 10, 1989, and by Respondent, Counter-Claimant and 3rd Party Claimant GERMIC on April 18, 1989. 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. Respondent Stacy Allyn Germic is liable for and shall pay to Claimant Charles Schwab & Co., Inc. the sum of Thirteen Thousand, Four Hundred Seventy-One Dollars and Eighty-Seven Cents (\$13,471.87).

2. Respondent is also liable for and shall pay to Claimant interest on said principal amount at the rate of 7% per annum from June 15, 1988 until paid in full.

3. Respondent is contractually liable for and shall pay to Claimant the sum of One Thousand, Five Hundred Dollars and Zero Cents (\$1,500.00) in attorneys' fees, as authorized in Paragraph 14, "Terms and Conditions" in the new account agreement.

4. Respondent's Counter-Claim against Charles Schwab & Co., Inc. and 3rd Party Claims against Charles Dangerfield, Rob Difuria, Steve Roche, Michael Burton and Marsha Brown are dismissed with prejudice.

5. The parties shall each bear their respective costs including attorneys' fees, except as provided in Paragraph 3 above.

6. Pursuant to Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$800.00 filing fee previously deposited by the Claimant. Respondent is assessed and shall pay to

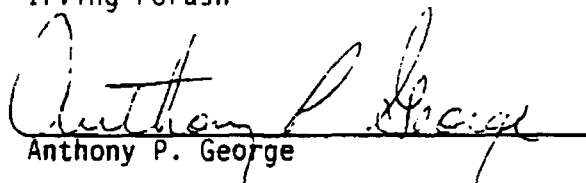
Claimant Charles Schwab & Co., Inc. the sum of Eight Hundred Dollars and Zero Cents (\$800.00) in reimbursement of filing fees.

PRESIDING ARBITRATORS

DATE SERVED: 04/27/90

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Richard Bryson

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Irving Porush

  
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Anthony P. George