

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Charles Schwab & Co., Inc. Claimant(s)

vs.

Stephen Bergman and Kimberly Bergman Respondent(s)

CASE NO. 88-02865

Heard Before the Members of the Arbitration Panel:

Walter P. Hitchcock
James M. Knowles
Robert I. Recker

SUMMARY OF ISSUES

Claimant alleged that Respondents entered into a written agreement wherein Respondents opened a cash, margin and short account with Claimant. Claimant alleged that Respondents purchased 2500 shares of common stock of GAP, Inc. at \$32 5/8 per share, that no payment was ever received by Schwab from the Respondents and that pursuant to federal regulations, the account was liquidated resulting in a debit balance of \$26,428. Respondents denied that they owe any sum to Claimant. Respondents alleged that on the same day they purchase 2500 shares of GAP, Inc., on margin, they simultaneously placed a sell order for \$30 a share. Respondents alleged that Claimants failed to execute the sell order as requested, thereby furthering Respondents' damages. Respondents alleged that they have an obligation only to honor the difference between the stock purchase and the sell order with credit due of \$4150.00, or \$2612.00 due the Claimants.

RELIEF REQUESTED

Claimant requested \$26,428.00 principal, accrued interest from October 23, 1987, until the date judgment is entered, reasonable attorneys' fees according to proof; costs; and such other and further relief as the Arbitration Panel considers proper. Respondents requested that they pay the amount of \$2,612.00 to the Claimants without interest or attorney's fees, that the Claimants pay any attorney's fees incurred by the Respondents, and for such other and further relief as may be proper.

Prepared by NASD Staff
July 19, 1989

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AWARD

Stephen Bergman and
Kimberly Bergman

Respondent(s)

rs of the Arbitration Panel:

On May 15, 1989 the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on September 6, 1988 and by Respondent Stephen Bergman on the record in the presence of the arbitrators on May 15, 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. Respondents Stephen Bergman and Kimberly Bergman are liable for and shall pay to Claimant the sum of Twenty Nine Thousand Seven Hundred Seventy Seven Dollars and Fifty Cents (\$29,777.50), inclusive of interest. Said liability is joint and several.
2. Pursuant to Paragraph 14 of Schwab's written Terms and Conditions, Respondents are liable for and shall pay to Claimant attorneys fees in the sum of Five Thousand Dollars (\$5,000.00). Said liability is joint and several.
3. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. (NASD) Code of Arbitration Procedure, the NASD shall retain the \$900.00 filing fee previously deposited by the Claimant. Respondents shall reimburse Claimant the \$900.00 filing fee. Further, pursuant to Section 43 of the Code of Arbitration Procedure, Respondents are assessed forum fees in the sum of \$900.00, to be paid directly to the National Association of Securities Dealers, Inc. Said liability is joint and several.

San Francisco, CA

Date Served: June 22, 1989