

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Marc Levin

Claimant

vs.

Charles Schwab & Co., Inc.

Respondent

CASE NO. 88-03948

SUMMARY OF ISSUES

Claimant filed this claim with the NASD on December 28, 1988 and alleged that Respondent improperly cancelled trades in his account after providing verbal confirmation of execution. Specifically, Claimant alleged that on December 28, 1987 he placed a series of thirteen orders with Respondent to purchase an aggregate of 6,000 shares of Northview Corp. ("NOVC") at \$18 per share and that he was provided verbal confirmation of each trade while he was on the telephone. Claimant further alleged that Respondent cancelled trades amounting to 5,000 shares after informing him that the market maker allegedly disavowed the previously confirmed orders.

Respondent maintained that the verbal trade confirmations Claimant received by telephone were courtesy notifications; that industry practices allowed Respondent to cancel the transactions within a reasonable period of time; and that the executions reported in error were subsequently cancelled on the same day the orders were placed. Respondent further maintained that Claimant is not entitled to an execution of his trades because they constitute an abuse of the small order execution system; specifically Respondent alleged that by feeding his block trade through the automated system in 500-share lots, Claimant deprived the market maker the opportunity to adjust its selling price to the market.

DAMAGES AND RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$20,000.00, punitive damages in the amount of \$25,000.00, interest and costs.

Respondent requested dismissal of the claim.

DAMAGES AND RELIEF AWARDED

On November 9, 1989 the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on December 27, 1988 and by Respondent on March 3, 1989. The hearing was held in Los Angeles, California and lasted two (2) 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. Respondent is hereby liable for and shall pay to Claimant the sum of Sixteen Thousand, Five Hundred Dollars and No Cents (\$16,500.00) representing compensatory damages plus interest.

2. The claim for punitive damages is hereby dismissed.

3. The parties shall each bear their respective costs including attorneys' fees.

4. Pursuant to Section 43 of the National Association of Securities Dealers, Inc. ("NASD") Code of Arbitration Procedure, the NASD shall retain the \$400.00 filing fee previously deposited by the Claimant.

OTHER ISSUES

The parties stipulated to the execution and service of this award in counterpart copies.

ARBITRATORS CONCURRING

DATE SERVED: 11/30/89

Joseph J. Aron

Charles D. Behm



Russell S. Klein

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REPORT OF
ARBITRATORS

CASE NO. 88-03948

Based upon the testimony and evidence presented at the hearing in this matter, the arbitrators issue the following report:

The NASDAQ System display of bid and ask quotations is the mechanism by which market makers received continuous information concerning the market value of NASDAQ securities. A market maker's failure to honor a quotation, and a member's refusal to execute transactions that were verbally confirmed to a public customer, calls into question whether the quotations on the system are bona fide also calls into question the integrity of the NASDAQ market itself. Therefore, we find the conduct of the market maker and the broker dealer to be inconsistent with the just and equitable principles of trade under the Rules of Fair Practice and award damages accordingly.

ARBITRATORS CONCURRING

DATE SERVED: 11/30/89

Joseph J. Aron

Charles D. Behm
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Russell S. Klein