

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	)	
Andrew South	)	
Mary South	)	
John Vida	)	
Claire Fortier et al	)	
	)	Claimants
vs.	)	AWARD
	)	NASD NO. 89-02037
Charles Schwab & Co., Inc.	)	
	)	Respondent

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. (NASD) on July 17, 1989. Claimants alleged: Ownership of a "substantial number of Savin Corp. Preferred A shares." Claimants Andrew South hereinafter (A. South) and John Vida (hereinafter Vida) decided to elect themselves, through a Consent Solicitation to the Board of Directors of Savin Corp., to represent the Savin A Preferred shareholders.

The Consent Solicitation was started forty days prior to Savin's scheduled Board of Directors' meeting. All brokerage houses dealing with claimants had all votes consummated 10 days prior to the scheduled meeting date, except Charles Schwab & Co., Inc., the result of a failure to deliver 6,741 shares on the part of another brokerage firm. Claimants A. South and Vida were elected subject to all votes being received by Savin Corp. prior to the Board meeting, which did not occur ("the votes that Schwab had bought from Morgan Stanley & Company arrived after the meeting").

Respondent generally denied the allegations of the claim and that Claimants had been damaged in any way or in any amount by Schwab's conduct. Respondent further alleged: that any damages Claimants may have sustained were caused by their own conduct and/or the conduct of other brokers or individuals (including but not limited to Morgan Stanley and Bear Stearns and their employees) that Claimants authorized to act on their behalf.

Respondent, as an accommodation to Claimants, purchased the additional shares and proxies which resulted in a loss to Schwab of approximately \$44,000.00. Respondent was then assured by Claimants Vida and A. South that the problem was solved and Respondent was not responsible for transferring the shares or proxies.

Furthermore, the same claims have already been litigated against Respondent in the San Francisco Municipal Court and should not be reasserted in this forum.

#### DAMAGES AND RELIEF REQUESTED

Claimants requested:

1. Compensatory damages in the amount of \$880,457.83;
2. Punitive damages.

Respondent requested attorney's fees at the arbitration hearing.

#### DAMAGES AND RELIEF AWARDED

On November 8, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on June 25, 1989 and by Respondent on April 23, 1990. The hearing was conducted in San Francisco, California and lasted two sessions, in addition to one pre-hearing session on November 7, 1990. 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. Claimants' request to amend their claim for compensatory damages to \$880,457.83 at the arbitration was granted, as was respondent's request to amend to include a request for attorney's fees.

2. Respondent's Motion to Dismiss the claims resolved in the San Francisco Municipal Court, Small Claims Division, was granted as to claimants 1) A. South, 2) A. South, Custodian for Cameron South, 3) Lynn Susoeff, 4) Claire Fortier and 5) John Vida.

3. Claimants' motion, made at the hearing to withdraw the claim without prejudice, was denied.

4. All claims are dismissed.

5. The claim for punitive damages is dismissed.

6. The parties shall each bear their respective costs. Claimants' are jointly and severally liable for and shall pay to Respondent the sum of \$1,750.00 in attorney's fees in accordance with Section 128.5 of the California Code of Civil Procedure.

7. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$500.00 filing fee previously deposited by the Claimant as an assessment of forum fees by the arbitrators and assess an additional \$500.00 filing fee, payable to the NASD, Inc. for the increase in the amount of damages from \$80,457.83 to \$880,457.83 (which is covered by the forum fee assessment, below). In addition, Claimants are jointly and severally assessed fees of \$2,300.00 minus \$500.00 already paid representing charges for forum fees payable to the NASD, Inc.

#### OTHER ISSUES

Claimants' motion to amend their prayer for damages to \$880,457.83 was granted as was Respondent's request for attorney's fees. Respondent's Motion to Dismiss claims of 1) A. South, 2) A. South, Custodian for Cameron South, 3) Lynn Susceff, 4) Claire Fortier, and 5) John Vida, was granted.

#### ARBITRATORS CONCURRING

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Allan Blau

DATE SERVED: 01/10/91

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Rc