



N.A.S.D. AWARD

Arbitration

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

Joseph Barna )

Name of Respondent(s) )

Charles Schwab & Company, Inc. )

Case No. 89-02954

Heard before the members of the Arbitration Panel:

Joseph L. Caruncho, Esq.  
Camille Besold  
Douglas Delaney, Jr.

#### CASE SUMMARY

This claim was filed with the NASD, Inc. on October 23, 1989. The hearing was conducted in Fort Lauderdale, Florida on July 19, October 29 and October 30, 1990, with a total of seven (7) sessions.

Claimant, Joseph Barna ("Barna"), alleged that Respondent, Charles Schwab & Company, Inc. ("Schwab"), made misrepresentations of material fact and omitted to state material facts regarding transfer of equity securities between his IRA and margin accounts and other matters; wrongfully reclassified marginable securities in the account to non-marginable; failed to give credit in a timely manner for the sale of securities; wrongfully sold securities to meet margin calls created by Respondent's failure to credit sales proceeds in a timely manner; that Respondent's actions constituted negligence; fraud; breach of fiduciary duty; breach of contract; violation of Section 517.301, Florida Statutes; and, violation of Section 10(b) of the Exchange Act.

Respondent denied all allegations of wrongdoing and alleged the affirmative defenses of: failure to state cause of action; breach of contract; failure to repurchase liquidated securities; failure to mitigate damages; estoppel; and, contributory negligence. Respondent asserted a counterclaim for attorney's fees and costs pursuant to Section 517.211(6), Florida Statutes.

Claimant/Counter Respondent, Barna, denied the allegations in the counterclaim.

#### RELIEF REQUESTED

Claimant requested rescissory damages, including the return of Telco and Fibronics stock; interest; costs; attorney's fees pursuant to Sections 517.211 and 57.105, Florida Statutes; relief contained in Section 29(b) of the Exchange Act; and, other relief.

Respondent requested dismissal; attorney's fees and costs pursuant to Section 517.211(6), Florida Statutes; forum fees; costs; and, other relief.

#### AWARD

On July 19, October 29 and October 30, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on October 26, 1989, and by Respondent on November 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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Respondent is found not liable and, therefore, all claims against it are hereby dismissed.
3. Claimant's request for attorney's fees is denied.
4. Claimant/Counter Respondent is found not liable and, therefore, the counterclaim against him for attorney's fees is hereby dismissed.
5. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of Eight Thousand Fifty and 00/100 (\$8,050.00) Dollars (\$1,150 x seven sessions). Claimant is hereby assessed forum fees in the amount of Five Thousand Two Hundred Fifty and 00/100 (\$5,250.00) Dollars for which the NASD shall retain the Seven Hundred Fifty and 00/100 (\$750.00) Dollar filing fee in partial satisfaction thereof. Respondent is hereby assessed forum fees in the amount of Two Thousand Eight Hundred and 00/100 (\$2,800.00) Dollars payable to the National Association of Securities Dealers, Inc.
6. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

OTHER ISSUES

None.

ARBITRATORS CONCURRING

Joseph L. Caruncho Esq., Camille Besold and Douglas Delaney, Jr.

Dated this 8th day of November 1990.