

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	)	
Jacob and Marian Futterman	)	
	)	Claimants
vs.	)	
	)	AWARD
Charles Schwab & Co., Inc.	)	NASD #89-02956
	)	
	)	Respondent

SUMMARY OF ISSUES

This claim was filed with the National Association of Securities Dealers, Inc. ("NASD") on October 23, 1989. Claimants' alleged that Respondent made an erroneous margin call which resulted in the wrongful liquidation of securities in Claimants' account. Specifically, Claimants' alleged that Respondent improperly determined that Claimants' de Laurentiis bonds were no longer marginable which caused Claimants' portfolio equity to fall below the house maintenance requirements. Claimants' further alleged that Respondents mistakenly undervalued the de Laurentiis bonds upon the belief that the company filed Chapter 7 bankruptcy rather than Chapter 11 bankruptcy.

Respondent denied the allegations and maintained that due to changes in market conditions, including the market price of the de Laurentiis bonds held by Claimants, the value of the Claimants' portfolio declined to 29% equity which was below house maintenance requirements. Respondents further maintained that pursuant to the account agreement entered into between the parties it was authorized to liquidate positions in the account in order to meet the maintenance call. Respondent further maintained that Claimants chose not to deposit additional funds or collateral upon notice of the maintenance call and instead provided Respondent with a list of securities held in the account in Claimants' preferred order of liquidation.

DAMAGES AND RELIEF REQUESTED

Claimant requested actual damages of \$71,362 plus punitive damages of \$214,086.

Respondent requested dismissal of the claim in its entirety and costs.

PROCEDURAL ISSUES

This claim was originally filed in California Municipal Court and was remanded to NASD Arbitration by an Order filed by the court on September 12, 1989.

This matter was originally scheduled to be heard before a sole arbitrator in accordance with Section 19 of the Code of Arbitration Procedure based upon the amount in controversy. Claimants subsequently filed an Amended Statement of Claim and amended the amount of damages requested. On August 22, 1990, in a single-session hearing, the arbitrator granted Claimants' motion to have this matter heard and determined by a panel of three arbitrators and the case was scheduled accordingly.

#### DAMAGES AND RELIEF AWARDED

On November 20, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on October 15, 1989 and by Respondent on October 3, 1989. The hearing was conducted 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 as follows:

1. Each and every claim is denied.
2. The parties shall each bear their respective costs including attorneys' fees.
3. In accordance with Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$400.00 filing fee that was previously deposited by the Respondent per the order of the Municipal Court which remanded this claim to Arbitration.

#### OTHER ISSUES

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

#### ARBITRATORS CONCURRING

DATE SERVED: 12/21/90

\_\_\_\_\_  
Joseph J. Aron

  
\_\_\_\_\_  
Ian L. Sitren

\_\_\_\_\_  
Gerald T. Grady, Jr.