

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between	)	
Drake Kennedy and Brian Kennedy	)	
Co-Trustees of the Regency	)	
Outdoor Advertising Inc.	)	
Profit Sharing Plan	)	
	)	Claimants
	)	AWARD
vs.	)	
	)	NASD #90-00978
Charles Schwab & Co. Inc.	)	
	)	Respondent

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on April 3, 1990. Claimants alleged that Respondent breached its fiduciary duty in allowing the level of options trading authority in their account to be changed to permit trades in uncovered options. Claimants further alleged that Respondent breached its fiduciary duty by failing to warn Claimants that the trades in uncovered options were inappropriate for the profit sharing account.

Respondent denied the allegations and maintained that the trades were executed pursuant to unsolicited orders placed by Claimants' investment advisor, Larry Rafferty; that Rafferty was given discretionary authority to do so by Claimants as evidenced by a Limited Power of Attorney; and that Claimants were aware that they specifically authorized trading in uncovered options. Respondent further maintained that Claimants ratified the trades complained of as part of a twenty-two month pattern of uncovered option trading in the account which was reflected on the confirms and monthly statements that were sent to both the Claimants and Rafferty.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages of \$1,118,862.61.

Respondent requested dismissal of the claim and costs.

DAMAGES AND RELIEF AWARDED

On January 23 and 24, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on March 14, 1990 and by Respondent on April 12, 1990.

The hearing was conducted in Los Angeles, California and lasted four (4) 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. At the conclusion of Claimants' presentation of their case-in-chief and upon resting their case, Respondent's motion for a directed verdict was GRANTED; accordingly, all claims are 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:

a) the NASD shall retain the \$1,000 filing fee previously deposited by the Claimants; and

b) Claimants are further assessed the sum of \$3,000 representing forum fees to be paid to the NASD directly.

#### OTHER ISSUES

This arbitration was convened pursuant to the Stipulation and Order between the parties entered by the Superior Court of the State of California, Case No. 740622, on February 6, 1990.

#### ARBITRATORS CONCURRING

DATE SERVED: 2/15/91

  
Richard M. Leigh

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DATE SERVED: 2/15/91

Edward T. Swanson  
Edward T. Swanson, Esq.

James H. Gormsen

Richard M. Leigh