

Arbitration

National Association of
Securities Dealers, Inc.
One East Broward Boulevard
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(305) 522-7391

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between)

Name of Claimant(s))

Charles Schwab & Co., Inc.)

Case No. 90-01283

Name of Respondent(s))

Susan P. Hudson)

Bruce R. Lutz)

Heard before the arbitrator:

Paul Sidney Elliott

Public

REPRESENTATION

Claimant, Charles Schwab & Co., Inc. ("Schwab"), was represented by Burton W. Wiand, Esq. of Fowler, White, Gillen, Boggs, et al.

Respondents, Susan Hudson - Lutz ("Hudson") and Bruce Lutz ("Lutz"), were represented by Franklyn J. Wollett, Esq. of Hollihan, Hilleboe & Wollett, P.A.

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on May 7, 1990. Claimant alleged that Respondents were liable for unjust enrichment as a result of receiving the proceeds from the sale of 900 shares of certain stock. Claimant alleged that receipt of the funds was, in part, due to fraudulent conduct of Respondents since, at the time Respondents ordered Schwab to sell 1,000 shares of the stock, Respondents were aware that 900 additional shares had been mistakenly added to the account.

Respondents, Hudson and Lutz, filed a Statement of Answer with the NASD on October 9, 1990. Respondents, denied all allegations of wrongdoing and alleged that at the time Respondents ordered all shares of the particular stock sold, they believed they were selling only 100 shares; upon learning of the transfer error, Respondents attempted to resolve the problem with the clearing firm and directed Schwab not to take any action until Respondents had an opportunity to resolve the matter with the clearing firm; Schwab ignored those directives and debited the account for the purchase of 900 shares and liquidated Respondents' account and applied the proceeds toward the debit balance. Respondents alleged that the liquidation was improper and resulted in unnecessary losses which should be set-off from the amounts owing to Schwab. Additionally, Respondent, Lutz, alleged that he is not a proper party to the proceeding since the account was in Hudson's name and Lutz only had a limited power of attorney.

RELIEF REQUESTED

Claimant requested damages in the amount of \$16,421.71 plus interest, cost, and attorney's fees.

Respondent, Hudson, requested set-offs for any amount deemed due and owing, plus attorney's fees and costs.

Respondent, Lutz, requested that he be dismissed from the claim, plus costs and attorney's fees.

AWARD

On August 16, 1991, in Tampa, Florida, during a hearing lasting two (2) sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on April 5, 1990 by Joanne Shaefer on behalf of Claimant, Schwab, and by Respondents, Hudson and Lutz, on October 1, 1990.

After considering the pleadings, the testimony and the evidence presented at the hearing the arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Hudson and Lutz, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$15,847.82, plus interest at the rate of 10% per annum from March 21, 1989 to August 16, 1991 in the amount of \$3,810.52 for a total due to the Claimant of \$19,658.34.
2. Respondents, Hudson and Lutz, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$5,500.00 for attorney's fees pursuant to the agreement of the parties at the hearing and pursuant to paragraph 14 of the New Account Application dated November 8, 1988 and the Federal Arbitration Act and the case law interpreting that Act.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Arbitrator has assessed forum fees in the amount of \$600.00 (two sessions x \$300.00 per session). Claimant is hereby assessed \$400.00 for which the NASD shall retain the \$400.00 previously deposited in full satisfaction thereof. Respondents are hereby assessed \$200.00, jointly and severally, payable to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

Fees are payable to the National Association of Securities Dealers, Inc.

OTHER ISSUES

None.

Concurring Arbitrator(s) Signature(s)

Paul Sidney Elliott
Paul Sidney Elliott, Esq.

Date of Decision: September 7, 1991