



NATIONAL ASSOCIATION OF SECURITIES DEALERS

N.A.S.D. AWARD

Arbitration

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

In the Matter of the Arbitration Between

Name of Claimant(s)

Daniel J. Conway, Esq.

90-01510

Name of Respondent(s)

Charles Schwab & Company, Inc.

Heard before the <arbitrator/members of the Arbitration Panel>:

Name

Public/Industry

Jeffrey W. Letwin, Esq.

Public

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on May 29, 1990. Claimant, Daniel J. Conway alleged that Respondent confirmed execution of a trade of Rykoff-Sexton Common Stock at 17 1/2 on April 2, 1990. Claimant alleged that the trade was not executed and claimant was so informed by Respondent on the following day at which time the stock was trading at 16 7/8. Claimant then agreed to sell only if Respondent would make good the loss. Respondent refused and Claimant ultimately sold at 16.

In a Statement of Answer filed with the NASD on July 13, 1990 Respondent, Charles Schwab & Co., Inc. maintained that Claimant had an obligation to mitigate the damages and could have sold at 17 3/8, the trade price at the time Respondent attempted to advise Claimant of its inability to execute the trade. Respondent further alleged that the mistake was that of the NYSE and they should not bear responsibility.

RELIEF REQUESTED

Claimant requested damages equal to its loss on the bargain, i.e.-the difference between the attempted trade at 17 1/2 and the actual sale of 16 for a total of \$1,500.00. Additionally, Claimant seeks interest from 4/10/90, costs of this proceeding and attorneys' fees.

Respondent requested dismissal of the Claim.

AWARD

On March 14, 1991 in Pittsburgh, PA, during a hearing lasting one (1) session, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Daniel J. Conway, on May 25, 1990 and by Richard S. Dangerfield on behalf of Respondent Charles Schwab & Co., Inc. on June 18, 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:

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

1. Respondent, Charles Schwab & Co., Inc. shall pay to Claimant the sum of One Thousand Five Hundred Dollars and No Cents (\$1,500.00);
2. Claimant's Claim for interest is hereby denied;
3. The Parties shall each bear their respective costs, including attorneys' fees;
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the NASD, Inc. shall retain the \$25.00 filing fee previously deposited by the Claimant;

FORUM FEES

Pursuant to Section 44c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

Respondent, Charles Schwab & Co., Inc. shall pay to Claimant an additional \$25.00 as costs of this proceeding.

Concurring Arbitrator's Signature

/s/

Jeffrey W. Letwin

Date of Decision: April 1, 1991