

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Dev Tyagi
Jessie Tyagi, and
Rameshwari Tyagi

Claimants

vs.

Charles Schwab & Co., Inc.

Respondents

AWARD

NASD #90-02852

REPRESENTATION

Claimants were represented by M. Paige Mitchell, Esq., of Karr, Tuttle, Campbell, Seattle, Washington.

Respondent was represented by Robert Baronsky, Esq., of Beresford Booth Baronsky & Trompeter, Seattle, Washington.

SUMMARY OF ISSUES

Claimants alleged breach of fiduciary duty, unsuitability and violations of the Washington State Consumer Protection Act arising out of Claimants' trading of common stocks on margin.

Respondent denied all allegations, and specifically denied that Claimant Rameshwari Tyagi has standing to bring claims as she was not an account holder, nor does she have any contractual or other relationship with Respondent. Respondent asserted also that it accepts and executes unsolicited customer orders only, and provides no investment advice to customers, and therefore is not liable to Claimants for their losses. Respondent further asserted that the losses in this account were a result of the adverse market conditions of October 1987. Respondent also alleged a debit balance due in the Tyagi account as a result of failure to meet a margin call.

DAMAGES AND RELIEF REQUESTED

Claimants requested damages of \$109,107 plus interest, treble damages up to \$10,000, and costs and attorneys' fees.

Respondents requested dismissal of all claims, and an award on the counter-claim for the debit balance of \$24,235.47 plus interest.

DAMAGES AND RELIEF AWARDED

This claim was filed with the NASD on October 12, 1990. On September 10 & 11, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimants on October 31, 1990, and by an authorized representative of Charles Schwab & Company on January 8, 1991. The hearing was conducted in Seattle, Washington, 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. All claims brought by Claimants are dismissed.
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 \$750 hearing session fee previously deposited by the Claimant as an assessment of forum fees.

OTHER ISSUES

The counterclaim asserted by Respondent was withdrawn without prejudice because of the bankruptcy stay in effect with regard to Dev and Jessie Tyagi in Case No. 90-03288 in the U.S. Bankruptcy Court for the Western District of Washington.

ARBITRATORS CONCURRING

DATE SERVED: 09/24/91



John A. Bender, Jr.

James A. Vawter

Donald C. Douglas