

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Gregory McAfee

Claimant

vs.

Charles Schwab & Co.

Respondent



REPRESENTATION OF PARTIES

Claimant Gregory McAfee was represented by Benjamin P. Abney, Esq. of Chapel, Riggs, Abney, Neal & Turpen, Tulsa, Oklahoma. Respondent Charles Schwab & Co., Inc. was represented by P. Scott Hathaway, Esq. of Conner & Winters, Tulsa, Oklahoma.

CASE SUMMARY

In a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on or about October 15, 1990 Claimant Gregory McAfee ("McAfee") alleged that Paul Hanson, an employee agent of Respondent Charles Schwab & Co., Inc. ("Schwab") approached McAfee about a \$13,000 investment in a private company which would be very lucrative within a short period of time. McAfee alleged that he wrote Hanson a \$13,000 check from his Schwab One Account on January 26, 1990. McAfee alleged that he requested the return of his monies to his account and that Hanson tendered a check to McAfee in the amount of \$3500 on a Bank of Oklahoma cashiers check. McAfee alleged that after he made numerous demands of Hanson, McAfee's Schwab One Account was credited with \$9500 on March 12, 1990. McAfee alleged that Schwab wrongfully debited his account in the amount of \$9500 on March 14, 1990 in a purported reversal of an error in McAfee's account. McAfee alleged that this debit was inappropriate since the debit occurred after the midnight deadline had passed and therefore Schwab had become liable for the deposit.

In a Statement of Answer filed with the NASD on February 6, 1991, Schwab asserted that McAfee's account was a "brokerage account" and not a "bank account". Schwab alleged that the \$9500 credit was a fraudulent journal accomplished by a computer book-entry by Paul Hanson and not by the deposit of a "draft" or the writing of a check. Schwab alleged this was irrelevant however, because McAfee's account had a check writing feature but was not a commercial checking account. Schwab alleged that this check writing feature was merely incidental to the main purpose of the account which was to effect securities transactions.

#### RELIEF REQUESTED

McAfee requested the sum of \$9500, exclusive of interest, costs and attorney's fees. Schwab requested dismissal of the claim in its entirety.

#### OTHER ISSUES

The presiding arbitrator requested post-hearing briefs from the parties on the issue of whether Schwab was or was not a "bank" as that term was defined in the Uniform Commercial Code ("UCC"), 12 A.O.S. 1991 Section 1-101 et seq.

#### PROCEDURAL MATTERS

On Wednesday, June 12, 1991 in Oklahoma City, Oklahoma during a hearing lasting a total of two (2) sessions, the undersigned arbitrator heard the controversy between the parties as set forth in submissions to arbitration signed on October 1, 1990 by Claimant Gregory McAfee and on January 8, 1991 by Richard S. Dangerfield on behalf of Respondent Charles Schwab & Co., Inc.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may 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.

AWARD

Pursuant to Section 19 (a) of the NASD Code of Arbitration, I have considered the pleadings, the testimony, the evidence presented at the hearing and the parties' post-hearing briefs, and have decided in full and final resolution of the issues submitted for determination as follows:

1. Schwab is liable for and shall pay to McAfee the sum of Nine Thousand Five Hundred Dollars and no cents (\$9500.00);
2. The parties shall each bear their own costs, expenses and attorney's fees incurred in this matter; and

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall retain the \$75.00 claim filing fee and hearing session deposit in the amount of \$200.00 previously deposited with the NASD by the Claimant McAfee. Schwab is assessed additional forum fees in the amount of \$200.00 which sum is payable to the NASD.

Dated:

August 7, 1991

Dennis S. Boxeur  
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Presiding Chair  
Public Arbitrator