

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Paul M. Schwartz

91-01992

Name of Respondent(s)

Charles Schwab & Company, Inc.
Mark P. Ryan

REPRESENTATION

Claimant, Paul M. Schwartz ("Schwartz"), pro se.

For Respondents, Charles Schwab & Company, Inc. ("Schwab") and Mark P. Ryan, ("Ryan") John D. Boykin, Esq., Boose Casey Ciklin et al.

CASE INFORMATION

Statement of Claim filed: 6/26/91.

Claimant's Submission Agreement signed on: 6/22/91.

Joint Statement of Answer filed by Respondents, Schwab and Ryan on: 8/12/91.

Respondent, Schwab's Submission Agreement signed on: 8/8/91 by Richard S. Dangerfield, Esq. on behalf of the firm.

Respondent, Ryan's Submission Agreement signed on: 7/12/91.

HEARING INFORMATION

Hearing Date/Sessions: 9/1/92-Two-(2) Sessions.

Hearing Location: Fort Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that Respondents committed breach of contract, negligence, negligent supervision, fraud and breach of fiduciary responsibility in connection with the erroneous purchase for Claimant's account and subsequent sale of 40 November 1987 OEX 230 Calls on Tuesday, October 20, 1987 for which Claimant stated he did not have sufficient equity in his account to cover.

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Claimant further alleged that he requested the order be placed for the purchase based upon erroneous price information provided him by Respondents and that the subsequent sale of the erroneous purchase created a debit in Claimant's account.

Respondents denied all allegations of wrongdoing and alleged that Claimant wanted to trade options, that his stated investment objective was speculation and that Claimant had fifteen years experience in stock and options. Respondents maintained that they advised Claimant against making a market order since there were no quotes available and advised Claimant that he should place a limit order. Respondents further maintained that the trade was unsolicited and therefore Respondents had no fiduciary duty toward Claimant. Respondents further asserted a Counterclaim against Claimant for the debit balance in his account.

RELIEF REQUESTED

Claimant requested an award of damages in the amount of \$7,787.78 plus interest costs and attorneys' fees. Claimant also requested an award of punitive damages.

Respondents requested relief on their Counterclaim in the amount of \$12,683.65 as well as dismissal of Claimants Claim.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. In this case, the parties have agreed to receive a conformed copy of the Award while the original remains on file with the NASD.

WARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Charles Schweb & Company, Inc., is found liable and shall pay to Claimant, damages in the amount of Twelve Thousand Three Hundred Eighty Eight Dollars and No Cents (\$12,388.00) including interest;
2. Respondent, Mark P. Ryan, is found not liable and, therefore, all claims against him are hereby dismissed;
3. Claimant is found not liable with respect to Respondents' Counterclaim and, therefore, the Counterclaim is dismissed;
4. Claimant's request for punitive damages is denied.

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OTHER COSTS

The parties shall each bear their own costs including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the arbitrator has assessed forum fees in the amount of \$600.00 (Two hearing sessions X \$300.00).

1. Respondent, Charles Schwab & Company, Inc. is hereby assessed forum fees in the amount of \$600.00, for which the NASD shall retain the \$300.00 previously deposited by Respondents in partial satisfaction thereof, \$75.00 of which shall be paid, by Schwab, directly to Claimant and the remaining \$225.00 shall be paid to the NASD, Inc;

2. The NASD, Inc. shall retain the \$75.00 and \$500.00 non-refundable deposits previously paid by Claimant and Respondents respectively;

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

ARBITRATOR

Arbitrator's Signature

/s/

Steven D. Elias, Esq.
(Sole Public Arbitrator)

Date of Decision: October 14, 1992