

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.

91-02714

Name of Respondent(s)

Jack A. Farrell

REPRESENTATION

For Claimant/Counter-Respondent: Charles Schwab & Co., Inc. was represented by Brigid A. Lane, Esq. of Brill, Sinex & Stephenson, located in Houston, Texas.

For Respondent/Counter-Claimant: Jack A. Farrell was represented by Dalia M. Stephens, Esq. of Houston, Texas.

CASE INFORMATION

Statement of Claim filed: August 30, 1991.

Claimant/Counter-Respondent Charles Schwab & Co., Inc.'s Submission Agreement signed on: June 3, 1991.

Statement of Answer and Counterclaim filed by Respondent/Counter-Claimant, Jack A. Farrell on: October 11, 1991.

Respondent/Counter-Claimant's Jack A. Farrell's Submission Agreement signed on: October 10, 1991.

Claimant/Counter-Respondent Charles Schwab & Co., Inc.'s Reply to Counterclaim filed on October 19, 1991.

HEARING INFORMATION

Pre-Hearing Conference: None Held

Hearing Date/Sessions: April 8, 1992 for two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant/Counter-Respondent Charles Schwab & Co., Inc. ("Schwab") alleged that on October 6, 1989, in connection with the debit balance left in his account after the sale of Braniff Air Common Stock, Respondent/Counter-Claimant Jack A. Farrell ("Farrell") executed a Promissory Note payable to

Schwab in the principal amount of \$11,525.56 plus interest. The Note provided for payment in forty-five (45) monthly installments to be made between October 15, 1989 and June 15, 1989. The entire principal balance with accrued and unpaid interest was to become due and payable, without notice and at the option of the holder of the Note, if Farrell defaulted. Additionally, under the terms of the Note, Farrell agreed to pay all expenses and attorneys' fees paid or incurred by Schwab or adjudged by a court. On October 13, 1989 Farrell made the initial installment payment of \$300.00. Schwab alleged that Farrell defaulted on all other payments under the Note. Schwab asserted causes of action on the Note and for breach of contract.

Farrell denied the material allegations of the Statement of the Claim, alleging that Schwab breached its account agreement with him. In addition, Farrell alleged that:

1. Schwab's negligence in maintaining his account was the proximate cause of the loss in the account;
2. Farrell received no consideration for the Promissory Note he signed on October 6, 1989;
3. Schwab failed to mitigate its damages;
4. Schwab's own negligence was the proximate cause of its damages; and
5. Farrell was coerced into signing the note and making the initial installment of \$300.00.

Farrell counterclaimed, alleging that: 1) Schwab breached its agreement with him; 2) Schwab was negligent in maintaining his account; and 3) Schwab violated the Texas Debt Collection Practices Act, R.C.S. Art. 5069, et seq., by coercing and threatening Farrell into executing the promissory note and making the first payment.

Schwab denied the material allegations in Farrell's Counter-Claim. In addition, Schwab set forth the following affirmative defenses:

1. Farrell waived and is estopped from complaining about the purported misconduct of Schwab when Farrell admitted that the sums were due under the note;
2. Schwab is a discount broker and therefore has no duty or obligation to provide investment advice;
3. Schwab affirmatively states that none of its agents or employees worked any fraud, duress or coercion upon Farrell; and
4. The Statute of Frauds and/or the Parole Evidence Rule bar all or part of Farrell's claims and allegations.

RELIEF REQUESTED

Claimant/Counter-Respondent Schwab requested that the panel enter an award

against Farrell for actual damages in the sum of \$11,280.31, the principal balance due on the Account and under the Note after giving all lawful credits and offsets; pre- and post-judgment interest; costs; attorneys' fees as provided pursuant to the Account Agreement and/or as provided under the Note; and any and all other relief to which claimant may be entitled. In addition, Schwab requested that Farrell's counter-claim be dismissed and denied in its entirety.

Respondent/Counter-Claimant Farrell requested that the panel cancel the promissory note which was the basis of the claim and dismiss the claim in its entirety. In addition, Farrell requested that he be awarded damages in the amount of \$13,385.00 plus pre- and post-judgment interest; attorneys' fees in a reasonable sum and costs of arbitration, all as provided for by the Texas Debt Collection Practices Act, R.C.S. Art. 5069; and any and all other relief to which Farrell may show himself entitled.

OTHER ISSUES CONSIDERED AND DECIDED

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 originals remain on file with the NASD.

AWARD

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

1. Respondent/Counter-Claimant Jack A. Farrell is liable for and shall pay to Claimant/Counter-Respondent Charles Schwab & Co., Inc. the sum of \$11,287.51 plus 8% simple interest per annum payable from the date Farrell receives the award until said award is paid;
2. In addition, Respondent/Counter-Claimant Jack A. Farrell is liable for and shall pay to Claimant/Counter-Respondent Charles Schwab & Co., Inc. the sum of \$1,100.00 as attorneys' fees. In determining to award attorneys' fees, the concurring arbitrators considered the fourth paragraph of the promissory note signed by Jack A. Farrell on October 6, 1989 and determined that authority existed for an award of attorneys' fees to Charles Schwab & Co., Inc.;
3. Respondent/ Counter-Claimant Jack A. Farrell's Counterclaim is hereby dismissed and denied in its entirety.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following total Forum Fees are assessed: 2 sessions X \$600.00 = \$1,200.

The National Association of Securities Dealers, Inc. shall retain the claim filing fee of \$500.00 and the hearing session deposit of \$600.00 previously deposited by the Claimant/Counter-Respondent Charles Schwab & Co., Inc.

Claimant/Counter-Respondent Charles Schwab & Co., Inc. is liable for and shall pay to the NASD additional forum fees in the sum of \$600.00. The NASD shall retain the claim filing fee of \$100.00 previously deposited by the Respondent/Counter-Claimant Jack A. Farrell.

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

CONCURRING ARBITRATORS' SIGNATURES

Dated:

Patrick Lanier
Patrick Lanier, Esq.
Public Arbitrator
Chairperson

July 2, 1992

A. Bentley Nettles
A. Bentley Nettles, Esq.
Public Arbitrator

June 19, 1992

DISSENTING ARBITRATOR'S SIGNATURE

I find that the evidence that the company was at fault for a portion of the losses experienced by the customer and the evidence that the brokerage company used unfair or illegal practices under the circumstances to procure the note warrant my dissent.

Christine E. Monical
Christine E. Monical, Esq.
Industry Arbitrator

June 18, 1992

Date Served:

July 2, 1992