

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John M. and Catherine D. Wildman

92-01544

Name of Respondents

Charles Schwab & Company, Inc.
William Sweat
Lisa Johnson
John Hall

REPRESENTATION

For Claimants John M. and Catherine Wildman ("Claimants"): Daryl J. Hudson, III, Attorney at Law

For Respondents Charles Schwab & Co., Inc., Bill Sweat, Lisa Johnson and John Hall ("Respondents"): James T. McDermott of the law firm of Ball, Janik & Novack

CASE INFORMATION

Statement of Claim filed: May 5, 1992

Amended Statement of Claim filed: October 16, 1992

Claimants' Submission Agreement signed on: April 29, 1992

Joint Statement of Answer filed by Respondents' on: July 17, 1992

Respondents' Answer to Claimants' Amended Statement of Claim filed: November 2, 1992

Respondent Charles Schwab & Company, Inc.'s ("Schwab") Submission Agreement signed on: June 2, 1992

Respondent William Sweat's ("Sweat") Submission Agreement signed on: May 29, 1992

Respondent Lisa Johnson's ("Johnson") Submission Agreement signed on: May 27, 1992

Respondent John Hall's ("Hall") Submission Agreement signed on: June 16, 1992 agreement.

HEARING INFORMATION

Hearing Dates/Sessions: March 9, 1993 - two sessions
 March 10, 1992 - two sessions
 March 11, 1993 - two sessions

Hearing Location: NASD Executive Office, Washington, D.C.

CASE SUMMARY

Claimants alleged, among other things, that they were unsophisticated investors, who had limited experience with investing and no experience with trading options prior to their relationship with Respondents. Claimants alleged that Respondents, specifically Sweat, induced Claimants to make investments that were unsuitable for them. Claimants alleged that Respondents engaged in a fraudulent scheme whereby they sought to dominate and control Claimants' accounts by concealing material information and by making material misrepresentations. Claimants alleged that Respondents did this intentionally to induce Claimants' purchase and sale decisions. Claimants alleged that they relied on the investment recommendations of Sweat and that Claimants lacked the requisite investment experience to appreciate the significance of Respondents departing from the typical procedure of "discount broker". Claimants alleged that Sweat provided John Wildman with information and recommendations regarding option trading and takeover candidates. Claimants alleged that Respondents had an immediate opportunity to observe John Wildman's compulsive mental state and that Respondents "preyed" upon his inability to control certain aspects of his behavior. Claimants alleged that Respondents induced Claimants to trade options even though Claimants had no prior experience, were incapable of calculating the risks of such trades, and even though John Wildman's mental and emotional state prohibited his control of his own behavior relating to the investments and losses that are the subject of this arbitration. Claimants alleged that at no time did Schwab or Sweat alert the Claimants to the risks of a trading strategy in takeover securities, whether common stocks or options. Claimants alleged that Respondents Schwab and Hall failed to closely supervise Claimants' account or the actions of their employees and are liable to the Claimants under the principles of respondeat superior and agency. Claimants alleged that Respondents systematically ignored all indications that John Wildman's trading activity was out of control. Claimants alleged that Respondents failed to follow its own procedures when reviewing Claimants account.

Respondents denied each and every allegation of wrongdoing alleged by Claimants. Respondents maintained that Claimants executed a Schwab New Account Application which provided in pertinent part that Schwab is a discount broker which accepts and executes on an agency basis unsolicited customer orders at low commission rates without providing customers with advice on the suitability or value of any proposed transactions. Respondents maintained that Claimants

were aware of this and agreed that they would look to Schwab only to execute orders. Respondents maintained that Claimants in their signed Option Application represented to Schwab that they had a combined 12 year history of investment experience, including the execution of 200 option transactions per year. Respondents maintained that Claimants were provided with the Option Clearing Corporation pamphlet which contained a detailed discussion of the risks inherent in options trading. Schwab also maintained that Claimants were provided with its own brochures that described the risks of stock and option trading. Respondents maintained that at no time did any of its employees provide Claimants with investment advice of any nature nor encourage Claimants to trade options. Respondents maintained that all orders were on an unsolicited basis and that no advice or recommendations were given by Respondents to Claimants with respect to any trading decision. Respondents maintained that when Schwab determined that Claimants trading was inconsistent with the objectives and financial information contained in Claimants Option Application, the option account was closed, no further orders were permitted, except to liquidate position being held. Respondents maintained that Claimants did not complain, until several years after the fact, about how Respondents handled Claimants' account. Respondents maintained that although they are not legally responsible for evaluating John Wildman's mental or emotional well being, they maintained that they were completely unaware that John Wildman suffered any mental or emotional problems.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$427,000, punitive damages in the amount of \$1,281,000, attorney's fees in the amount of \$40,000 and other costs in the amount of \$5,000; plus interest at the maximum legal rate.

Respondents requested that Claimants claim be dismissed in its entirety and that the Panel award Respondents attorneys' fees.

OTHER ISSUES CONSIDERED & 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 and post hearing submissions, the undersigned arbitrators has decided in full and final resolution of the issues submitted for determination as follows:

1. That Claimants' claim is denied in its entirety, including Claimants claim for punitive

damages.

2. That the parties shall bear their respective costs including attorneys' fees, except for such fees specifically provided for herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed:

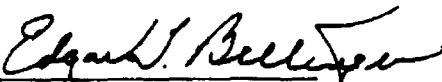
six hearing sessions x \$1,000 = \$6,000

Forum fees for the six hearing sessions conducted in this matter shall be split equally between the Claimants and the Respondents so that Claimants are assessed \$3,000, however, pursuant to Section 43(c) of the Code, the NASD shall retain the \$1,000 hearing session deposit previously filed by Claimants and use said sum to offset the amount due to the NASD from Claimants so that Claimants are assessed \$2,000 in forum fees. Respondents are jointly and severally assessed forum fees in the amount of \$3,000.

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

Concurring Arbitrator's Signature
Name

Public/Industry



Edgar T. Bellinger, Esq.

Public Arbitrator

Date of Decision: May 28th, 1993

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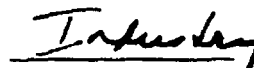
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Concurring Arbitrator's Signature
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Ida C. Wurczinger, Esq.

Public/Industry



NASD Date of Decision: May 28th, 1993

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Concurring Arbitrator's Signature
Name

Public/Industry


Henry Jacques Hall

Public Arbitrator

Date of Decision: May 22, 1993

NASD Date of Decision: May 28th, 1993