

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Steven L. Candeto

Case No. 92-02434

Name of Respondent(s)

Charles Schwab & Company, Inc.

REPRESENTATION

Claimant, Steven Candeto was pro se.

For Respondent, Charles Schwab & Co. Inc. ("Schwab"): Neil Baritz, Esq. of Boose, Casey, Ciklin, et. al.

CASE INFORMATION

Statement of Claim filed on: July 23, 1992. Claimant's Submission Agreement signed on: December 23, 1991.

Respondent's Statement of Answer filed on: October 14, 1992. Respondent's Submission Agreement signed on: October 9, 1992 by Richard Dangerfield on behalf of Schwab.

HEARING INFORMATION

On May 10, 1993, in Tampa, Florida, a hearing lasting two sessions was conducted.

CASE SUMMARY

Claimant alleged that Respondent was liable for: breach of contract; negligent misrepresentation; negligence; and, violations of Rules 10b, 10b-4 and 10b-5 of the Securities Exchange Act of 1934. Claimant alleged that: Schwab improperly debited his account when Candeto purchased "old" Safeway stock to cover a short position and Schwab later informed him that not enough shares of the "old" stock were available; that the reason for this was that Schwab allegedly overtendered stock; and, that Candeto could have purchased the "when distributed" shares to completely cover his short position had he not been given inconsistent information from Schwab.

Respondent denied all allegations of wrongdoing and alleged that: Claimant is a sophisticated investor; was advised of the risks involved; Candeto failed to take appropriate steps to protect himself after receiving the exercise assignment; the debit represented Claimant's pro rata portion of the failure to deliver stock caused by his short position remaining open after the expiration of the tender offer; had Candeto purchased the when distributed shares to cover his short position, he would not have covered 14,000 shares of his short position and the amount claimed against his account would have been ever greater; and, Schwab did not overtender customer shares in the Safeway offer.

Respondent alleged the affirmative defense of: statute of limitations.

RELIEF REQUESTED

Claimant requested damages in the amount of \$41,553 plus interest.

Respondent requested dismissal of the claim.

OTHER ISSUES CONSIDERED & DECIDED

1. Respondent filed a Motion to Dismiss based on the statute of limitations. This Panel deferred ruling on the Motion and, in light of the decision below, the Motion is deemed moot.
2. 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Schwab, is found not liable and, therefore, all claims against it are hereby dismissed.

OTHER COSTS

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$800 (two sessions x \$400 per session).
2. Claimant is hereby assessed \$400 for which the NASD shall retain \$400 of the \$750 previously deposited by Claimant in full satisfaction thereof.
3. Respondent, Schwab, is hereby assessed \$400 payable to the National Association of Securities Dealers, Inc.
4. The NASD shall retain the non-refundable filing fee of \$120 paid by the Claimant.
5. The NASD shall refund to Claimant the \$230 overpayment.

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

Concurring Arbitrators' Signatures

/s/
Edwin B. Kagan, Esq.

Public

/s/
Patrick A. Davis, Esq.

Public

/s/
Floyd A. Hillstrom, Esq.

Industry

Date of Decision: June 17, 1993