

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Gerald W. and Nancy R. Barnard

92-03201

Name of Respondent

Charles Schwab & Company, Inc.

REPRESENTATION

For Claimants Gerald W. and Nancy R. Barnard ("Claimants"): Gerald W. Barnard

For Respondent Charles Schwab & Company, Inc. ("Respondent"): Richard S. Dangerfield. Associate General Counsel for Charles Schwab & Company, Inc.

CASE INFORMATION

Statement of Claim filed: September 18, 1992

Claimants' Submission Agreement signed on: September 11, 1992

Statement of Answer filed by Respondent on: March 12, 1993

Respondent's Submission Agreement signed on: March 11, 1993

HEARING INFORMATION

No hearings were conducted on this matter.

CASE SUMMARY

Claimants alleged that on August 6, 1990, they entered an order to sell 40 contracts of OEX August 320 Puts at the market. Claimants alleged that their order was improperly handled by Respondent and that Respondent failed to properly execute the transaction. Claimants alleged that due to Respondents error

they suffered monetary losses.

Respondent maintained that Claimants have already litigated this claim before the AAA. Respondent maintained that having lost at the AAA, Claimants only remedy was to move to vacate the award in federal or state court which they did not do. Respondent maintained that Claimants have improperly sought to re-litigate this claim with the NASD. Respondent maintained, having already been adjudicated, the claim is barred by the doctrine of res judicata.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$33,408.00

Respondent requested that the panel grant its motion to dismiss the Claimants' claim. Respondent requested that the Panel decide and rule on its Motion to Dismiss Claimants' Claim as being barred by the doctrine of res judicata prior to hearing.

OTHER ISSUES CONSIDERED & DECIDED

The Panel pursuant to Respondent's request decided to rule on Respondent's Motion to Dismiss prior to the hearing.

AWARD

After considering the pleadings and the evidence presented in submissions to the Panel, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent's Motion to Dismiss Claimants' claim as Barred by the Doctrine of Res Judicata is granted. Therefore the hearing scheduled for October 29, 1993 was canceled and Claimants' claim is dismissed in its entirety.
2. That the party shall bear their own costs, including attorney's fees.

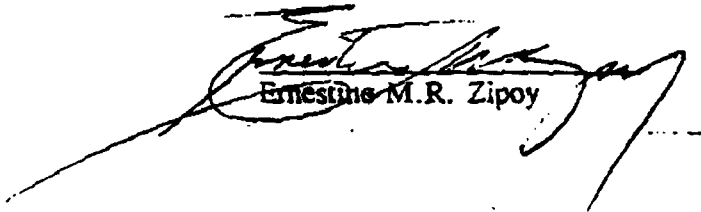
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FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the NASD shall retain the hearing session deposit fee of \$400 previously filed by the Claimants.

Concurring Arbitrator's Signature
Name

Public/Industry


Ernestine M.R. Zipoy

Public Arbitrator

NASD Date of Decision: November 18, 1993

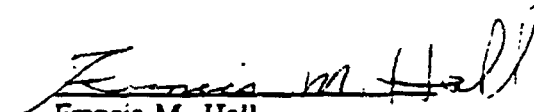
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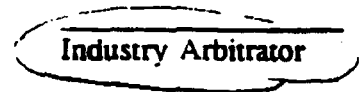
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Concurring Arbitrator's Signature
Name

Public/Industry


Francis M. Hall


Industry Arbitrator

NASD Date of Decision: November 18, 1993