

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Richard Flacks

vs.

NASD #92-03371

Name of Respondent

Charles Schwab and Company, Inc.

REPRESENTATION

For Claimant: Pro Se

For Respondent: Joseph Aldridge, Esq. of Charles Schwab and Company, Inc. of San Francisco, California.

CASE INFORMATION

Statement of Claim filed: October 6, 1992

Claimant's Submission Agreement signed: October 1, 1992

Statement of Answer filed by Respondents on: November 12, 1992

Respondents' Submission Agreements signed on: November 13, 1992

HEARING INFORMATION

Prehearing Conference(s) Date(s)/(Sessions): None

Hearing Date/(Sessions): May 4, 1993 (one session)

Hearing Location: Los Angeles, California

CASE SUMMARY

Claimant alleged: Misrepresentation regarding an investment in Leona Enterprises, Inc. (Leona)
Claimant relied on the issuance of two dividend checks for \$150.00 each regarding the

profitability of the investment. If he had been notified that dividends actually were not met he would have liquidated his position. Claimant was not informed that the company could not or would not pay out their dividend until September 3, 1992. The dividend checks were issued on June 15 and August 10, 1992.

Respondent alleged: Claimant purchased 1,000 shares of Leona on January 14, 1992, for \$3,590. The dividend payment originally scheduled to be paid on February 27, 1992 was rescinded by the board of directors, who promised to announce a new payable date in the future. Claimant purchased an additional 3,000 shares on May 11.

On June 15, 1992, the Depository Trust Corp. (DTC) paid to all broker-dealers holding Leona stock a \$0.15 per share dividend, although it had not been received, which resulted in a \$150.00 credit to claimant's account. This event also occurred on July 9, but when the DTC learned of the dividend rescission, it debited all its broker accounts and respondent in turn debited claimant's account.

Respondent had no account executive assigned to claimant's account so there was no fiduciary duty. Claimant bore the full responsibility of making inquiries regarding his account. Respondent also alleged a counterclaim for an unsecured debit in claimant's account of \$300.00

Claimant responded to the counterclaim by stating that a \$300.00 debit balance does appear in his account and that he was holding this amount pending the outcome of the arbitration.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$3,750, the value of the security on or about June 15, 1992.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. All of claimant's claims are dismissed;

2. Claimant is liable for and shall pay respondent \$300.00 on the counterclaim;
3. The parties shall each bear their respective attorney's fees;
4. The parties shall each bear their respective costs.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall retain the \$100 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

Claimant and respondent equally

calculated as follows: One hearing session at \$100/hearing session, equals \$100, minus \$100 already paid by the claimant as a hearing deposit. Respondent shall therefore pay claimant \$50 as its share of the forum fees.

Fees are payable to the National Association of Securities Dealers,

ARBITRATION PANEL

Name

Public/Industry

Daniel K. Donahue, Esq.

Public Arbitrator


Daniel K. Donahue, Esq.

DATE SERVED: 05/28/93

Date of Decision: 5/20/93