

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Mitchell and Elizabeth Williams

92-03603

Name of Respondent

Charles Schwab & Company, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on October 26, 1992, Claimants Mitchell R. and Elizabeth A. Williams, who appeared Pro Se, alleged that they called Respondent Charles Schwab & Co., Inc. on October 22, 1990 at about 10:57 EST to place an order to sell 1,200 shares of Continental Airlines at the limit price of 6 1/2 and approximately 30 minutes later Claimants received a phone call from Respondent confirming the sale of the stock at 6 1/2. Claimant further alleged that at that point Claimant Mitchell R. Williams left his residence to arrange payment for an outstanding debt with the proceeds of the sale, however; when he returned home he found another message informing Claimant that they "may have" received a confirmation on their sell order, but the confirmation was in error whereby the trade was still pending, at which time, Claimants immediately called Respondent to find out what happened and no explanation was given except to say that the confirmation call was made in error. Claimants contended that on October 24, 1990 they sent an inquiry to the Houston Securities & Exchange Commission office to which Respondent replied that the report of execution was erroneous due to a client error and stated that at no time after the error was entered until the close of trading did the stock trade at or above 6 1/2, however; the Sales and Quotes Report state between 11:02 and 11:45 EST after the error the report shows 10,600 shares were traded at 6 1/2. Claimant further contended that the false confirmation resulted from someone negligent in their duties at Respondent. Claimant asserted that because of Respondent's negligence their account lost value.

Respondent Charles Schwab & Company, Inc., by and through their in-house counsel, Richard S. Dangerfield, Esq., maintained that on October 22, 1990 at 10:52 a.m. EST Claimants Mitchell R. and Elizabeth A. Williams contacted them to place an order to sell all 1,200 shares

of Continental stock at the limit price of \$6 1/2, and this order was good for trading on October 22. Respondent further maintained that at the time Claimants placed their order to sell the shares, the bid price was 6 1/4 and the asking price was 6 3/8. Respondent contended that after Claimants placed their sell order they were contacted by Respondent's office, at which time, Respondent erroneously confirmed that their order was executed, however, the bid price never went above 6 1/4, therefore, the market never traded at Claimants' price. Respondent further contended that as soon as they found out that the trade was executed they informed Claimants whereby Claimants had approximately 4 hours of trading remaining to change their order, if appropriate, and avoid the losses they now claim.

RELIEF REQUESTED

Claimants Mitchell R. and Elizabeth A. Williams requested \$7,707.60 in actual damages plus interest from October 29, 1990 to date of payment of award together with \$25.00 in expenses and costs, including any fees.

Respondent Charles Schwab & Co., Inc. requested the claim be denied in its entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Donald F. Hawbaker, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on October 20, 1992 and by the Respondent on December 30, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Claimants' Motion to Preclude Respondent's Statement of Answer is denied.
2. The claims of Claimants Mitchell R. and Elizabeth A. Williams against Respondent Charles Schwab & Co., Inc. are dismissed.
3. The parties shall bear their respective costs.
4. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Mitchell R. and Elizabeth A. Williams shall be retained by the NASD, Inc.

AFFIRMATION

I, **DONALD F. HAWBAKER, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: April 27, 1993