

## NASD AWARD

### Claimants

Bruce Oliver

### Respondents

Charles Schwab & Co., Inc..

Case Number 93-00656

## REPRESENTATION

For Claimant, Bruce Oliver ("Oliver"): Brian Cooke, Esq. of Arnstein & Lehr, West Palm Beach, Florida.

For Respondent, Charles Schwab & Co., Inc. ("Schwab"): Neil Baritz, Esq. of Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, West Palm Beach, Florida.

## CASE INFORMATION

Statement of Claim filed: February 22, 1993. Claimant's Submission Agreement signed: February 16, 1993.

Respondent's Statement of Answer filed: May 18, 1993. Respondent's Submission Agreement signed May 17, 1993 by Richard Dangerfield on behalf of Schwab.

## HEARING INFORMATION

On May 12, 1994, in Ft. Lauderdale, Florida, a hearing lasting 3 sessions was conducted.

## CASE SUMMARY

Claimant alleged that Respondent breached its fiduciary duty and violated Rule 10(b) and Section 10b-5 of the Securities Exchange Act by permitting and failing to supervise the options trading in Claimant's account. Claimant alleged that Respondent failed to terminate Claimant's option trading privileges despite the fact that on several occasions Claimant sustained losses in excess of 35% of his stated liquid net worth.

Respondent alleged that, consistent with Schwab policy, it does not and did not solicit activity or offer investment advice of any kind and that all of Claimant's trading was unsolicited. Respondent asserted that it is well settled law that a discount broker does not have a regulatory duty to monitor the suitability of an investment where it does not recommend or solicit transactions. Respondent alleged that Claimant's investment objectives were speculation and Claimant understood the risks associated with trading options.

#### **RELIEF REQUESTED**

Claimant requested damages in the amount of \$41,023.00 plus punitive damages of \$250,000.00 plus attorney's fees and costs of \$7,500.00.

Respondents requested dismissal of the claim plus costs and fees.

#### **OTHER ISSUES CONSIDERED AND 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 arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- (1) Respondent, Schwab is found liable and shall pay to Claimant the amount of \$10,000.00.
- (2) Claimant's request for attorney's fees, costs and punitive damages is denied.
- (3) Respondent's request for attorney's fees and costs is denied.

#### **OTHER COSTS**

The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

**FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$1,200.00 (3 sessions x \$400.00 per session).

(1) Claimant is assessed \$600.00 for which the NASD shall retain the \$400.00 previously deposited in partial satisfaction thereof leaving a balance due to the NASD of \$200.00 payable to the National Association of Securities Dealers, Inc..

(2) Respondent is hereby assessed \$600.00 payable to the National Association of Securities Dealers, Inc..

(3) The NASD shall retain the non-refundable filing fee of \$120.00 paid by the Claimant.

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

Concurring Arbitrator(s) Signature(s)

Public/Industry

/s/  
Louise T. Jeroslow, Esq.

Public/Chairperson

/s/  
Stanley Bo Fineberg

Public

/s/  
John Sciaudone

Industry

Date of Decision:

7-6-94