

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Jerry & Ruth Winkler

NASD #93-02340
AWARD

VS.

Name of Respondents

Charles Schwab & Company, Inc.,
Debbie Bertram

REPRESENTATION

For Claimants: Robert A. Massi, Esq. of Las Vegas, Nevada.

For Respondents: Richard S. Dangerfield, Esq. of Charles Schwab
of San Francisco, California.

CASE INFORMATION

Statement of Claim filed: June 14, 1993

Claimant's Submission Agreement signed: July 2, 1993

Statement of Answer filed by Respondents on: August 11, 1993

Respondents' Submission Agreements signed on: August 10, 1993

HEARING INFORMATION

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

Hearing Date/(Sessions): January 19, 1994 (two sessions)

Hearing Location: Las Vegas, Nevada

CASE SUMMARY

Claimants alleged:

On December 30, 1992 claimant Jerry Winkler (Winkler) telephoned respondent Charles Schwab & Company (CSC) and ordered the sale of 10,000 shares of Autotote stock, which he was told by respondent Debbie Bertram (Bertram) was selling for 19 3/4 per share. When Bertram executed the sale the next day, the price of Autotote had fallen to 16 3/4 per share. Winkler had specifically advised Bertram not to sell the stock below 19 3/4 per share. As a result of the sale at 16 3/4 per share, claimants have suffered damages of \$30,000, plus attorneys fees and costs.

Respondents alleged:

Bertram is not a sales person but a registered representative, who enters unsolicited orders placed by retail customers. She does not give advice, make recommendations or otherwise manage accounts and should be dismissed as a respondent.

When Winkler advised Bertram of his desire to sell Autotote, she told him that the bid price at the close of trading the previous day had been \$19 3/4; she did not advise that the stock was in fact selling for that price since it had not yet opened for trading. Winkler expressly declined to enter limit orders and instead entered a market order, as evidenced by the taped conversation between Winkler and Bertram. The order was entered at the opening price of \$16 3/4 at 9:18 a.m. and the executions were reported back at 9:52 a.m.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages of \$30,000;
2. Attorneys' fees; and
3. Costs.

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 the file with the NASD.

Respondents requested that Debbie Bertram be dismissed as a respondent, which was denied by the panel.

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 claims are dismissed;
2. The parties shall each bear their respective attorney's fees;
3. 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 \$400 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

Charles Schwab, only for \$400.00

calculated as follows: Two hearing sessions at \$400/hearing session, equals \$800, minus \$400 already paid by the claimant as a hearing deposit.

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

ARBITRATION PANEL

Name

Public/Industry



William Singleton, Esq.

Public Arbitrator

Arthur G. Grant

Public Arbitrator

Harvey M. Hudgins

Industry Arbitrator