

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Eugene Marino

93-02789

Name of Respondent

Charles Schwab & Company, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on July 19, 1993, Claimant Eugene Marino, who appeared Pro Se, alleged that on May 20, 1993 he put an order in to Respondent Charles Schwab & Co., Inc. for 500 shares of Spectrum ("SPCL") at 12 1/8 per share, at approximately 9:36 a.m. at which time Respondent, by and through their broker, told Claimant that as soon as he filled the order, he will get back to Claimant, however, Respondent never got back to him and at 10:45 a.m., Claimant called Respondent to inquire if the order was filled. Claimant further alleged that he was advised that the order was not filled but that Spectrum was now going for 12 7/8 whereby he was questioned if he wanted to put the order in for 12 7/8, at which time, Claimant stated "forget it", "forget the whole thing" and hung up. Claimant contended that at approximately 1:00 or 2:00 p.m., he called Respondent to ask what Spectrum was going for and was advised that it was 6 or 6 1/4, at which time, Claimant stated that it must be the wrong stock whereby Respondent stated that the stock had dropped about 6 points. Claimant further contended that at this same time he requested that Respondent re-confirm that his order was cancelled and was advised that it was whereby at about 3:25 p.m. he called Respondent to inquire about Spectrum and was told it was about 6 or 6 1/4, at which time Claimant stated to Respondent's representative that he really lucked out today and the reply was, you certainly did Mr. Marino. Claimant asserted that the next day, May 21, 1993, he got a call from Respondent at about 9:30 a.m., stating that he bought 500 shares of Spectrum whereby he replied that this order was cancelled yesterday and was advised by Respondent that they would get back to him. Claimant further asserted that Respondent got back to him about an hour later and started asking questions: what was the brokers name?, what offices did the calls come from?, the times, etc. at which time Claimant replied that whenever he buys stock he does not bother remembering names, etc... but just puts in his order. Claimant

further alleged that although he notified Respondent of the cancellation, he received a bill for the 500 shares of Spectrum and immediately contacted Respondent whereby Claimant was advised he must pay for the stock or Respondent will take it out of his account to pay for Spectrum, at which time Claimant reluctantly paid for the stock because he had no choice. Claimant further contended that he cancelled the order and Respondent informed him that they record every phone conversation, thus they should have a record of the cancellation.

Respondent Charles Schwab & Company, Inc., by and through their in-house counsel, Richard S. Dangerfield, Esq., maintained that on May 20, 1993 Claimant Eugene Marino called Respondent's Garden City office and placed an order to buy 500 shares of Spectrum Information Technologies stock (symbol "SPCL") at a limit price of \$12 1/8 per share whereby Claimant never cancelled the order, and it was properly executed that same day at his limit price, he was thus obligated to pay for it. Respondent further maintained that Claimant's allegations about conversations he supposedly had with representatives are totally unsubstantiated and Respondent found no evidence whatsoever that any of its representatives told Claimant that his order had been cancelled. Respondent contended that Claimant contends that he cancelled his SPCL order when he allegedly told an unidentified representative "Forget it, forget the whole thing" and immediately hung up the telephone whereby assuming this conversation took place. Claimant's statement did not amount to a request to cancel the order and in order to properly cancel an order over the telephone, a customer would need to clearly tell the representative that he wanted to do so, at which time, the representative would then enter a request to cancel the order and read it back to the customer to verify, its accuracy, and only then the customer affirmatively verified the cancellation request, would the representative transmit it to the trading area handling the order. Respondent further contended that Claimant has failed to provide any substantiation for his claim. Respondent asserted that Claimant never made such a request, nor did he otherwise effectively communicate an instruction to cancel his order, thus the claim should be denied.

RELIEF REQUESTED

Claimant Eugene Marino requested \$6,158.51 in actual damages.

Respondent Charles Schwab & Company, 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, Marc L. Ripp, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 14, 1993 and by the Respondent on September 13, 1993.

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. The claim of Claimant Eugene Marino against Respondent Charles Schwab & Company, Inc. is dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Eugene Marino shall be retained by the NASD, Inc.

AFFIRMATION

I, **MARC L. RIPP, 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.

Marc L. Ripp, Esq.
Signature of Arbitrator

DATE OF DECISION: December 1, 1999

STATE OF: NEW JERSEY

SS:

COUNTY OF: ESSEX

On this 15th day of November 1999, before me personally appeared **Marc L. Ripp, Esq.** to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Helen G. Migut

HELEN G. MIGUT
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Jan. 4, 1999