

**N.A.S.D. AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS**

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**In the Matter of the Arbitration Between**

**Name of Claimant**

David M. Parks

Case No.  
93-05144

vs.

**Name of Respondent**

Charles Schwab & Company, Inc.

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**REPRESENTATION**

For Claimant: Steven D. Irwin, Esq., Markel, Schafer & Means, P.C., 1120 Grant Street, Pittsburgh, PA, 15219

For Respondent: Barry J. Shulock, Esq., Reed Smith Shaw & McClay, 435 Sixth Avenue, Pittsburgh, PA, 15219

**CASE INFORMATION**

Statement of Claim filed: November 30, 1993.

Claimant's Submission Agreement signed on: November 30, 1993.

Statement of Answer filed by Respondent on: February 23, 1994.

Respondent's Submission Agreement signed on: February 22, 1994

**HEARING INFORMATION**

Hearing Date: October 31, 1994 - 2 Sessions

Hearing Location: Pittsburgh, PA.

**CASE SUMMARY**

Claimant allege he purchased 3,000 shares of Allegheny International, Inc. ("Allegheny") on September 26, 1990 at a price of 3/8 through his brokerage account at Charles Schwab & co., Inc. ("Schwab"). At the time of the purchase, Claimant maintains, Allegheny was subject to the jurisdiction of the Bankruptcy Court. On October 19, 1990 Schwab's Reorganization Department sent out a cash/stock election notice to all holders of Allegheny stock, including the Claimant, stating that Claimant could either (1) receive approximately \$16.40 cash per 100 shares of Allegheny (amounting to \$492.00 for all of Claimant's shares) or (2) receive warrants for each 100 shares of common stock of Allegheny. The October 19, 1990 notice also provided that "If no election is made, you will receive Option #2". Claimant explains that a revised notice as to the number of warrants was sent to Claimant indicating the number of warrants would be 7.9508 per 100 shares and not 79.508 as in the first notice (amounting to 239 warrants).

Claimant states that he did not return an election form assuming that he was accepting option #2 and would receive the warrants.

Claimant goes on to say that on November 7, 1990, one day before the end of the election period, Schwab's Reorganization Department was notified that a company called Japonica, the parent of the company that was acquiring Allegheny, decided that all Allegheny stockholders who did not return an election form would receive cash instead of warrants. This alternative was set forth in Election Notice that Schwab received. Claimant states he never received an Election Notice from Schwab and Schwab admits that the Election Notice was not sent to Claimant with the Cash/Stock Election Form.

On January 23, 1991, all holders of Reorganized Allegheny who had not made an election received cash distributions of \$0.164 per share. Thus, Claimant states, Schwab deposited in Claimant's account \$492.00 (\$0.164 x 3,000 shares).

Claimant alleges that Schwab misrepresented how to receive warrants, as opposed to cash, in Reorganized Allegheny on the Cash/Stock Election Form and contends that Schwab was negligent and breached an expressed and implied contract with him. Claimant also alleges that Schwab breached its fiduciary duties.

Schwab denies the allegations, stating that it merely acted as a conduit of information between Claimant and Reorganized Allegheny, and did not represent that the election notice constituted a complete statement of the terms of the election. Additionally, respondent maintains that had claimant read the information sent him, he would have been aware of Japonica's authority and

could have taken whatever action he deemed appropriate. Respondent explains that under the terms of its contract with Claimant, Claimant had a duty to protect his own interests by knowing and understanding his investment. Respondent stated that all necessary information was provided to Claimant.

### **RELIEF REQUESTED**

Claimant requests damages in the minimum amount of \$12,653, (which constitutes the value of the 239 warrants as of the close of business on November 29, 1993 less \$492.00 (the monies received by Claimant), interest from January 23, 1991, and cost of the arbitration.

Respondents requested: All claims be dismissed.

### **AWARD**

After considering the pleadings, the testimony and the evidence presented at the hearing and submitted by the Claimant and the Respondent, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant is awarded damages in the amount of \$4,586.75.
2. Respondent shall pay Claimant interest at a rate of 7% from January 21, 1993 to the date of the Award.
3. Respondent is ordered to reimburse Claimant for the fees paid to initiate the arbitration.

The rationale of the arbitrator is as follows: The facts and circumstances regarding the claim are primarily the result of the actions of Japonica, the party that decided to pay cash instead of warrants to Allegheny stockholders who did not file an Election form assuming that they would receive warrants and not cash. Nevertheless, Schwab could have taken action and should have taken action that would have protected the interests, financial and otherwise, of Claimant. Since Schwab was the stockholder of record they could have and should have submitted an Election Form that specifically provided for issuance of cash or warrants, as the case may be. Since Schwab failed to act prudently, they must be held accountable for the loss incurred by their client, the Claimant.

Regarding damages, Schwab wrote to Claimant by letter dated July 2, 1991 specifically rejecting his claim for warrants and stating that it is Claimant's responsibility to purchase his own warrants. The date of June 30, 1992 is selected as the date to value the warrants for purpose of determining the damage to the Claimant.

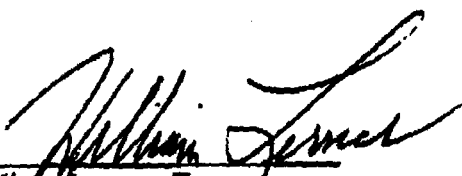
**FORUM FEES**

Non-refundable Filing Fee:	\$100.00
Hearing Sessions Deposit (2 x \$300):	<u>\$600.00</u>
Total Fees:	\$700.00

1. Claimant Paid \$400.00.
2. Respondent is ordered to remit \$300.00 to the NASD and to reimburse Claimant in the amount of \$400.00.

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

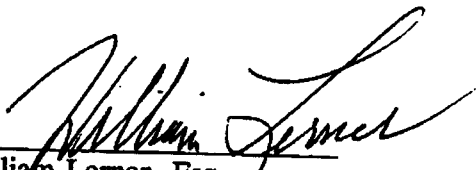
Sole Arbitrator's Signature

  
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William Lerner, Esq.

Public Chairperson

NASD Date of Decision: December 22, 1994

Sole Arbitrator's Signature

  
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William Lerner, Esq.

Public Chairperson