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N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Leroy F. Perry

94-00024

Name of Respondents

Charles Schwab & Co., Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 31, 1993, Claimant Leroy F. Perry, who appeared Pro Se, alleged that on April 2, 1991, he held 3,000 face value of Healthco International, Inc. 7% 2011 convertible bonds ("Healthco Bonds") in street name at Respondent Charles Schwab & Co., Inc. Claimant further alleged that if he did not convert the Healthco Bonds into stock by April 30, 1991, the bonds would no longer be convertible. Claimant contended that on April 2, 1991, Hicks, Muse & Co., Inc. offered to purchase all Healthco bonds at a price of \$681.75 each, based on the number of shares of common stock these bonds could be converted into. Claimant further contended that Respondent never informed him of this purchase offer, and that had he been informed of it, he would have immediately converted the bonds to stock and delivered the stock for purchase in accordance with the offer. Claimant alleged that his May, 1991 account statement from Respondent listed the Healthco Bonds as convertible. Claimant further alleged that his May, 1993 account statement from Respondent still listed the Healthco Bonds as convertible. Claimant contended that he did not find out about the purchase offer until May, 1993, but since the purchase offer was still valid at this time, he tendered his bonds through Respondent on May 25, 1993. Claimant further contended that on June 8, 1993, Respondent submitted the Healthco Bonds to the transfer agent by Federal Express next day delivery. Claimant alleged that on June 9, 1993, Healthco International, Inc. filed for bankruptcy. In Claimant's Reply to Respondent's Statement of Answer, Claimant contended that Respondent never notified Claimant of the purchase offer, and that it had a duty to do so. As

a result of the above, Claimant alleged that he has suffered damages for which the Respondent should be held liable.

Respondent Charles Schwab & Co., Inc., through its representative Rhonda Y. Jones, maintained that it properly notified the Claimant by letter on April 4, 1991 of the purchase offer and its impending April 30, 1991 expiration date. Respondent further maintained that Claimant never responded to the April 4, 1991 letter or otherwise instructed Respondent of his intentions to participate in the tender offer until May 25, 1993. Respondent contended that it correctly submitted the Heathco Bonds to the transfer agent after receiving the Claimant's conversion request in May, 1993. Respondent further contended that Heathco International, Inc. rejected and returned the securities to the agent because Heathco was prevented by its bankruptcy from making any conversion payments. As a result of the above, Respondent contended that it should not be held liable in this matter.

#### **RELIEF REQUESTED**

Claimant Leroy F. Perry requested \$2,045.25 in actual damages, plus interest from April 19, 1991 to the date of the arbitration award.

Respondent Charles Schwab & Co., Inc. requested that the Claimant's Statement of Claim be dismissed in its entirety.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Morris Gray, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on December 27, 1993 and by the Respondent on February 18, 1994.

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 claims of Claimant Leroy F. Perry against Respondent Charles Schwab & Co., Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.

3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

**AFFIRMATION**

I, **MORRIS GRAY**, do hereby affirm upon my oath of arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

  
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Signature of Arbitrator

**DATE OF DECISION:** July 28, 1994