

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

May Beth Hsieh,  
Claimant,

v.

No. 94-00394

Charles Schwab & Co., Inc.,  
Rick Bergstrom, and  
Julie Layton Urban  
Respondents

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REPRESENTATION OF PARTIES

Claimant May Beth Hsieh ("Claimant") appeared pro se.

Respondent Charles Schwab & Co., Inc. ("Respondent") was represented by Monica Goebles, Esq., of Steptoe & Johnson, Phoenix, Arizona.

CASE INFORMATION

Claimant's Statement of Claim was filed on or about January 31, 1994. Claimant's Submission Agreement was signed on January 27, 1994.

Respondent's Statement of Answer was filed on or about April 15, 1994. Respondent's Submission Agreement was signed on April 15, 1994.

A Notice of Dismissal of Respondents Rick Bergstrom and Julie Layton Urban was filed on or about December 6, 1994.

HEARING INFORMATION

Hearing date: December 8, 1994. Two (2) sessions.

Hearing Location: Paradise Valley, Arizona.

CASE SUMMARY

Claimant stated that she suffered losses in connection with transactions involving Southwest Airlines ("LUV") stock during the period of February and March of 1993. Claimant alleges that: Respondent's representatives made misleading and inconsistent information regarding the percentage of equity Claimant was required to have in her account to place a short sale; Respondent failed to automatically cover her short LUV position when Claimant purchased, on February 16, 1993, additional shares of LUV stock; Respondent's failure to cover the short position caused her to sell 1,500 LUV shares on margin; and that Respondent had failed to respond promptly and resolve her complaint.

In its Answer, except as expressly admitted therein, Respondent denied each and every allegation contained in the Statement of Claim. Respondent asserted that when Claimant placed the February 16, 1993, order, she did not enter it as a covering trade, and, therefore, the purchase did not result in her short position being covered or closed. Respondent further asserted that on or about March 4, 1993, Claimant had been informed that she needed to specifically instruct Respondent that the February 16 purchase of LUV shares was to close the position, and that Respondent offered to take 2,000 of the 3,000 long LUV shares in the account and use them to "flatten out", or close the short position. Respondent stated that Claimant refused the offer. Respondent further contended that it had made another offer to resolve the dispute amicably, and that Claimant had again refused the offer.

RELIEF REQUESTED

Claimant requested that: Respondent be forced to go back to the date that the Claimant originally intended to cover her short, February 16, 1993, and cover it with my 3000 share "buy" on that date, leaving Claimant 1,000 shares long in her account; Respondent would "bust" Claimant's March 9, 1993, "sell" of 1,500 shares; and thereby give Claimant restitution in the form of \$22,475.44. Claimant also requested an Award of \$2,061.28 in "lost opportunity" damages, and \$351.66 for commissions and fees.

Respondent requested that the Statement of Claim be dismissed in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

On December 5, 1994, the parties filed with the NASD a Dismissal of Rick Bergstrom and Julie Layton-Urban from this arbitration. As

such, they did not appear as parties at the hearing.

The parties have agreed that the Award in this matter may be executed by 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 original(s) remain on file with the NASD.

#### **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. Respondent Charles Schwab & Co., Inc. is liable for, and shall pay to the Claimant, May Beth Hsieh, the sum of \$9,298.69 with interest at 10 % per annum until paid. Interest on the sum of \$1,514.63 shall accrue from February 3, 1993, and interest on the sum of \$7,784.69 shall accrue from March 9, 1993.

2. Respondent Charles Schwab & Co., Inc. is liable for, and shall pay to the Claimant, May Beth Hsieh, the sum of \$500.00 as reimbursement for the filing fee and hearing session deposit incurred with the filing of this arbitration.

#### **OTHER COSTS**

Each party shall bear its own costs associated with this arbitration, including attorneys' fees and expert witness costs, except as specifically set forth in this Award.

#### **FORUM FEES**

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure (the "Code"), the following forum fees are assessed:

2 hearing sessions x \$400.00 = \$800.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$100.00, and shall retain the hearing session deposit in the amount of \$400.00 previously paid to the NASD by the Claimant.

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Additional forum fees in the amount of \$400.00 are assessed against Respondent Charles Schwab & Co., Inc..

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

**CONCURRING ARBITRATORS**

Dated:

Name:

January 3, 1995

J. Noland Franz /s/  
J. Noland Franz  
Presiding Chair  
Public Arbitrator

December 27, 1994

Stephen T. Yeargan /s/  
Stephen T. Yeargan  
Industry Arbitrator

December 28, 1994

Sara Jo Dew /s/  
Sara Jo Dew  
Public Arbitrator

Date of Service by the NASD: 1-4-95