

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Robert C. and Sally A. Kiszewski

94-01077

Name of Respondents

Charles Schwab & Company, Inc.
Paul Meinville

REPRESENTATION

For Claimants Robert C. and Sally A. Kiszewski (hereinafter collectively referred to as "Claimants") appeared Robert M. Villarini, Esq. with the law firm Michalek, Villarini & Henry, Hamburg, New York.

For Respondents Charles Schwab & Company, Inc. (hereinafter referred to as "Charles Schwab") and Paul Meinville (hereinafter referred to as "Meinville") appeared Thomas R. Stritter, Esq. with the law firm Morgan Lewis & Bockius, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on March 17, 1994.
Claimants' Submission Agreement was signed on March 2, 1994.

A Joint Statement of Answer was filed by Respondents Charles Schwab and Meinville on June 1, 1994.
Respondent Charles Schwab filed a Submission Agreement which was executed on April 13, 1994.
Respondent Meinville executed a Submission Agreement on April 13, 1994.

HEARING INFORMATION

Hearing Date/Sessions: August 11, 1995 - Two Sessions

The hearing was held at the Holiday Inn located in Buffalo, New York.

CASE SUMMARY

In or about April, 1991, Claimants allegedly open an account with Charles Schwab for the purpose of investing their life savings. In addition to this account, Claimants opened two separate IRA accounts with Charles Schwab at or about the same time. It was Claimants' contention that they advised respondent Meinville that they were of limited income and the monies in their accounts represented their entire life savings from the sale of their primary residence. Claimants alleged that they advised respondent Meinville of their desire to insure that these funds would be available to them upon retirement; that

Claimants could not afford to risk any losses in their accounts since they had no ability to replace their capital; and that Claimants were only interested in safe and conservative investments which would result in the preservation of capital and provide an income for them for the rest of their lives. It was also alleged that Respondent Meinville recommended to Claimants that their son, Robert Kiszewski, Jr. should have a limited power of attorney that would allow him to act on Claimants' behalf. Respondent Meinville allegedly assured Claimants that their son would not be allowed to withdraw funds from the account and that Meinville would not permit any trades that were not consistent with Claimants' investment objectives.

From the period of April 26, 1991 to March 19, 1992, almost one year, Respondents allegedly allowed Claimants' son to improperly withdraw approximately \$28,186.63 from one of Claimants' accounts. Further, from June, 1991 to March, 1992, Respondents allegedly permitted Claimants' son to purchase and sell stocks and trade heavily in their account during this period of time; allegedly began to engage in the pattern of excessive trading involving stocks and investment strategies which were inappropriate for Claimants without their knowledge or consent; and allegedly provided Claimants' son with a blank Option Trading Application which Claimants' son allegedly "duped" Claimants into signing all of which resulted in commissions of \$12,165.00 and a realized loss of \$61,544.63. Claimants maintained that their son has plead guilty to a federal crime for stealing these funds from Claimant's account is presently serving a federal jail sentence.

It was not until May of 1992 that the Claimants allegedly became aware that Respondent Meinville had depleted their account completely; that the Respondents made and executed unauthorized trades; that Respondents violated their judiciary obligations due and owing to the Claimants; that Respondents were negligent in the manner in which they handled and dealt with the assets entrusted to their care; and that Respondent Charles Schwab violated its obligation to Claimants in failing to adequately and properly supervise Respondent Meinville.

Respondent's denied all allegations of wrongdoing asserted by the claimants in their statement of claim. Respondent maintained that Claimants' losses were caused by the unsuccessful trading decisions and the intervening criminal act of the claimants' son, a compulsive gambler with a criminal record for crimes of dishonesty and violence at the time claimants opened their account at Charles Schwab. Respondents also maintained that Claimants entrusted their son with powers of attorney authorizing him to control the trading in the account, and later to withdraw money from the account, despite their knowledge of their son's gambling addiction, his propensity for dishonesty, and his having assaulted his mother with a gun. Respondents denied having knowledge of any of the relevant history or propensities of Claimant's son. Respondents maintained that Claimant's son was convicted in federal court for his criminal conduct in stealing his parents' savings from their account at Schwab. No charges were brought against Respondents as it was allegedly obvious that Respondents had been misled by Claimant's son.

Moreover, Respondents maintained that Respondent Schwab is a discount brokerage firm which does not provide research advice or recommend securities and does not manage accounts or make trading decisions for customers. Respondents maintained Claimants authorized all the trading in their account and all withdrawals from their account, ratified all the trading in their account and all withdrawals from their account, and provided their son with actual or apparent authority to place the trades made in Claimants' account and to accept delivery of checks drawn on Claimants' account.

Respondents maintained that they executed the trades selected by Claimants or their son, in a proper and timely manner, and promptly reported the results of those trades and all cash withdrawals to Claimants in written confirmations and monthly statements, which Claimants accepted without protest.

RELIEF REQUESTED

Claimants respectfully requested the arbitrators grant an award directing that:

1. Charles Schwab and Company, Inc. and Paul Meinville, jointly and severally, be directed to pay to Claimants the sum of One Hundred and Fifty Thousand Dollars (\$150,000.00), plus interest and punitive damages;
2. Reasonable and appropriate legal fees; and
3. Such further and different relief as to the arbitrators seems just, proper and appropriate under the circumstances.

Respondents requested that Claimant's statement of claim be dismissed in its entirety, and that respondents be awarded their costs and disbursements, including reasonable attorneys' fees, incurred in the defense of this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies and have agreed to receive conformed copies of the Award while the original remains on file with the NASD.

AWARD

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

1. Respondents be and hereby are liable, jointly and severally, and shall pay to the Claimants the sum of \$9,000.00, interest specifically excluded.
2. All claims for punitive damages be and hereby are denied.
3. Each party shall bear their respective costs, including attorneys' fees.
4. All other claims be and hereby are denied.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

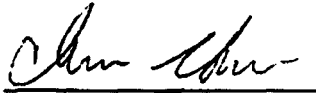
2 sessions x \$750.00 = \$1,500.00

1. Claimant be and hereby is liable and shall pay to the NASD, Inc. the sum of \$750.00 representing one-half of the forum fees assessed against the parties. However, Claimants previously deposited \$750.00 with the NASD. Therefore, there are no outstanding forum fees owed by Claimants to the NASD.
2. Respondents be and hereby are jointly and severally liable and shall pay to the NASD, Inc. the sum of \$750.00 representing one-half of the forum fees assessed against the parties.

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

Concurring Arbitrators' Signatures
Name

Philip Marshall, Esq.
Public Arbitrator - Chairperson



Charles B. Border
Industry Arbitrator

John P. DeLuca
Public Arbitrator

I, Charles B. Border, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.


Charles B. Border

DATE OF DECISION: November 27, 1995

Concurring Arbitrators' Signatures
Name

Philip Marshall, Esq.
Public Arbitrator - Chairperson

Chalres B. Border
Industry Arbitrator

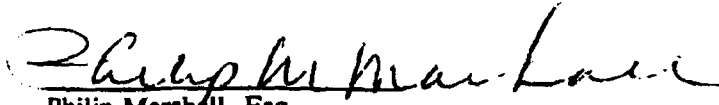
John P. DeLuca
John P. DeLuca
Public Arbitrator

I, John P. DeLuca, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.

John P. DeLuca
John P. DeLuca

NASD Date of Decision: November 27, 1995

Concurring Arbitrators' Signatures
Name



Philip Marshall, Esq.
Public Arbitrator - Chairperson

Chalres B. Border
Industry Arbitrator

John P. DeLuca
Public Arbitrator

I, Philip Marshall, do hereby affirm pursuant to Article 7507 of the Civil Procedure Law & Rules, that this is my decision in the above-captioned matter.



Philip Marshall

NASD Date of Decision: November 27, 1995