

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Phillip Weissner

94-01838

Name of Respondents

Charles Schwab & Co., Inc.
Michael Higgins
Ned Samuels

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on May 13, 1994, Claimant Phillip Weissner, who appeared Pro Se, alleged that he was not properly advised by Respondent Ned Samuels ("Samuels"), a broker at Respondent Charles Schwab & Co., Inc. ("Schwab"), that when he purchased shares of Fidelity Capital Appreciation Fund he was purchasing a load fund. Claimant further alleged that he asked to speak with the manager, Respondent Michael Higgins ("Higgins"), but that he never called him back. As a result of the above, Claimant contended that he has suffered damages for which the Respondents should be held liable.

Respondents Charles Schwab & Co., Inc., Michael Higgins and Ned Samuels, through Respondent Schwab's in-house representative Rhonda Y. Jones, San Francisco, California, maintained that Respondent Higgins had no involvement in the transaction. Respondents further maintained that Respondent Samuels was at all times acting within the scope and authority of his employment at Respondent Schwab. Respondents contended that Respondent Schwab did not charge or receive the load fee, but that Fidelity did. Respondents further contended that Fidelity declined to return the charges. Respondents maintained that they did not have a duty to disclose that Fidelity charged a load on purchases of the Fund in question. Respondents further maintained that time spent pursuing a claim is not a recoverable item of "damage". As a result of the above, Respondents contended that they should not be held liable in this matter.

RELIEF REQUESTED

- Claimant Phillip Weisser requested \$1,884.00 in actual damages, \$2,500.00 in consulting and preparation time damages, and \$125.00 in fees.

Respondents Charles Schwab & Co., Inc., Michael Higgins and Ned Samuels requested that the Claimant's claims be dismissed in their entirety.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single public arbitrator, Michael G. Shannon, was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on May 12, 1994, by Respondent Charles Schwab & Co., Inc. on July 13, 1994, and not by Respondents Michael Higgins and Ned Samuels as required by Sections 12 and 13 of the NASD Code of Arbitration Procedure.

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. Respondent Charles Schwab & Co., Inc. is liable and shall pay to Claimant Phillip Weisser \$1,884.00 in actual damages.
2. The claims of Claimant Phillip Weisser against Respondents Michael Higgins and Ned Samuels are dismissed in their entirety.
3. The parties shall bear their respective costs.
4. 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. Respondent Charles Schwab & Co., Inc. is liable and shall pay to Claimant Phillip Weisser \$50.00 as reimbursement of the filing fee.

Page Three
Award 94-01838

AFFIRMATION

I, **MICHAEL G. SHANNON**, 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.

Michael Shannon

Signature of Arbitrator

DATE OF DECISION: December 8, 1994

Page Four
Award 94-01838

STATE OF *NEW YORK*

SS:

COUNTY OF *NEW YORK*

On this 5 day of December 1991, before me personally appeared **MICHAEL G. SHANNON** 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.

Katherine T. Sabia

KATHERINE T. SABIA
Notary Public, State of New York
No. 03-8731418
Qualified in Bronx County
Commission Expires 12/31/96