

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Morton and Lydia J. Sugarman

94-02364

Name of Respondent

Charles Schwab & Company, Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 21, 1994, Claimants Morton and Lydia J. Sugarman, who appeared Pro Se, alleged that Respondent Charles Schwab & Co., Inc. placed their account in jeopardy over a three day trading period when it executed an unauthorized transaction in their account and refused to correct it. Claimants further alleged that Andrew Harwin was given a Power of Attorney over their account, had a real-time options/stock reporting system available for making trading decisions, and when actively trading he connected via computer into the "Street Smart System". Claimants contended that on January 24, 1994, Andrew Harwin placed a day order for 20 WMXBF Options at 7/8, cancelled it and simultaneously replaced it with an Immediate/Cancel order which was verified by Respondent's records. Claimants further contended that within a few minutes the Street Smart order status screen reported the transaction completed and closed with 2 options purchased and 18 cancelled. Claimants alleged that in complete reliance on this report, no critical attention was required for the while and none was given to it. Claimants further alleged that they had a one day trade on January 25, 1994 and the screen was consulted once again, confirming the previous status. Claimants contended that on January 26, 1994 it was discovered that there were 20, and not 2 options in their account and this was verified by Street Smart. Claimants contended that Respondent refused to correct this, and the options subsequently became worthless, causing a loss. As a result of the above, Claimants alleged that they have suffered damages for which the Respondent should be held liable.

Respondent Charles Schwab & Company, Inc., through its Representative, Margaret W. Welborn, maintained that at the time Andrew Harwin placed the immediate or cancel ("IOC") order, 2 of the 20 contracts had already been filled from the first order and a "too late to cancel" ("TLC") notice appeared on the screen showing the 2 options purchased. Respondent further

maintained that at the time Mr. Harwin viewed the screen on January 24, 1994 it read chronologically as follows: 1) the day order: 2) the TLC purchase of 2 option contracts: and 3) the cancellation of the options followed by the IOC order for 20 options contracts. Respondent contended that the order was executed filling the remainder of the 20 orders, and as a result, Mr. Harwin purchased 20 WMXT options for the Claimants' account as requested. Respondent further contended that not only was Mr. Harwin aware of the 20 options held in the Claimants' account, but he tried unsuccessfully to sell 10 of them on January 26, 1994 at 3:57 p.m. As a result of the above, Respondent contended that it should not be held liable in this matter.

RELIEF REQUESTED

Claimants Morton and Lydia J. Sugarman requested \$1,633.53 in actual damages.

Respondent Charles Schwab & Co., Inc. requested that the claims of the Claimants be dismissed.

AWARD

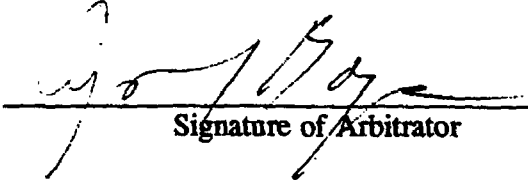
Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Cynthia L. Boyce, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on June 7, 1994 and by the Respondent on September 23, 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 the Claimants Morton and Lydia J. Sugarman 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 Claimants shall be retained by the NASD, Inc. Respondent shall pay to Claimants \$25.00 as partial reimbursement of the filing fee.

AFFIRMATION

I, **CYNTHIA L. BOYCE, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: March 28, 1995

STATE OF:

SS:

COUNTY OF:

On this ____ day of _____, 19__, before me personally appeared Cynthia L. Boyce, Esq. to me known and known before me to be the individual described in and who executed the foregoing instrument and she duly acknowledged to me that she executed the same.
