

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

IN THE MATTER OF)	
ARBITRATION BETWEEN)	
)	
JOHN R. HUTCHISON, JR.,)	
)	
Claimant,)	
)	
v.)	95-02168
)	
CHARLES SCHWAB & CO., INC.)	
)	
Respondent)	

PARTY REPRESENTATION

For Claimant: John R. Hutchison ("Hutchison") was represented by Harry O. Moline, Esq. of Moline & Shostak, L.L.C., located in St. Louis, Missouri.

For Respondent: Charles Schwab & Co., Inc. ("Schwab") was represented by Stephen J. O'Brien of Sonnenschein Nath & Rosenthal, located in St. Louis, Missouri.

CASE INFORMATION

Hutchinson's Statement of Claim was filed on or about May 4, 1995. Hutchinson's Submission Agreement was signed on April 28, 1995.

Schwab's Statement of Answer was filed on or about June 29, 1995. Schwab's Submission Agreement was signed on July 19, 1995.

HEARING INFORMATION

The hearing was held on February 26, 1996 in St. Louis, Missouri for a total of two (2) sessions.

CASE SUMMARY

Claimant Hutchison alleged that Respondent Schwab failed to allow him to hedge his portfolio of gold stocks in his Keogh account at Schwab by the purchase of XAU puts, thereby causing him to sustain a loss in the account. Hutchison specifically alleges:

1. Hutchison actively follows the gold sector and had by September 30, 1994 accumulated stock in 15 gold issues totalling \$215,714,25.
2. Hutchison formed the opinion that the gold sector was weak and that he needed to protect his account from the perceived immediate downside risk and wanted to hedge his account by the purchase of XAU puts.
3. Hutchison called Schwab on October 14, 1994 and told them of his desire to purchase XAU puts. The representative told Hutchison he was not authorized to accept such an order. When Hutchison specifically requested, the representative refused to give the name of someone in authority who could approve the order. The representative advised Hutchison he would call "Compliance".
4. Hutchison thereafter attempted to reach the representative on several occasions without success. When he eventually did reach him, he realized the request had not been approved. The representative again agreed to seek from "Compliance" such approval. Thereafter, the representative left a message on Hutchison's answering machine that such request was denied. Hutchison then called the supervisor and explained the situation. On December 7, 1994, Hutchison learned the request was approved. However, by then the gold market had dropped and Hutchison's portfolio had declined in value.
5. Hutchison was unaware of any restrictions preventing him from purchasing XAU puts and considered such as a safety net to most effectively protect his account in volatile markets since the sale of gold stocks would be expensive and the transfer of his account would be time consuming.
6. Hutchison asserts that the restriction was unreasonable and had no purpose, that it was inconsistent with his needs and objectives and that it could and should have been removed immediately.

Based upon these allegations, Hutchison asserted claims for contractual breach of good faith and fair dealing, negligence and breach of fiduciary duty.

Respondent denies liability alleging in its Statement of Answer that:

1. Schwab's trading policy prohibited options trading in the Keogh account other than covered options. Purchasing index options such as XAU are not considered covered options transactions.
2. Hutchison was only approved to enter into covered options transactions.
3. On October 14, 1994, Hutchison inquired about the possibility of purchasing XAU puts and the representative told him that he could not buy an index option because only covered option purchases were permitted under the Keogh Plan and Custodial Account.
4. The representative informed Hutchison that he could purchase puts on the individual gold stocks he held in his account. Hutchison declined any of these alternatives.
5. Hutchison continued to request Schwab to permit him to purchase XAU puts and Schwab subsequently agreed so long as he owned a large enough portion of gold equities. Schwab had no obligation to make this exception, and the fact that it was made after

Hutchison's continued requests does not mean that Schwab had a duty to make an exception sooner.

6. Schwab did not advise Hutchison what to purchase and sell in his Keogh account and did not cause the decline in value of the gold stocks.

7. Claimant never attempted to place an order to purchase any shares of the XAU index; he merely inquired whether he could buy the XAU puts.

8. Hutchison had a duty to mitigate any losses in the account and he failed to do so.

9. Hutchison's loss is unsubstantiated and he does not have an actual loss.

RELIEF REQUESTED

Claimant requested entry of an award against Respondent in the sum of \$57,714.25 plus additional amounts to cover interest and costs.

Schwab requests that the claim be denied in its entirety.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that a handwritten, signed Award may be entered. The parties 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 have decided in full and final resolution of the issues submitted for determination as follows:

Hutchinson's claims are, and each of them, denied with prejudice.

Each party shall bear its own costs and expenses, including attorneys' fees, associated with this arbitration.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions x \$500 = \$1,000 in forum fees. Pursuant to §43(b) of the NASD Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to §43(c) of the Code, the NASD shall **retain** the non-refundable filing fee in the amount of \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD by Hutchinson.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$300 previously paid by Schwab.

Additional forum fees in the amount of \$500 are assessed against the Hutchinson.

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

Dated:

Charles Clardy
Charles Clardy
Public Arbitrator, Presiding Chair

s/s

March 17, 1996

Keith D. Patten
Keith D. Patten
Public Arbitrator

s/s

March 14, 1996

James D. Veron
James D. Veron
Industry Arbitrator

s/s

March 27, 1996