

## NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION

Hearing Location: Hyatt Hotel at Southpark  
Charlotte, NC

### CASE SUMMARY

Claimant alleged that in December, 1993, he had a contract with Charles Schwab & Co. in which Schwab agreed to allow Claimant to trade options and that Schwab breached that contract in bad faith by canceling option orders placed by Claimant on December 15, 1993. Claimant alleged that Schwab was negligent in informing Claimant that he could trade options before it investigated whether the information that Claimant provided on his application was accurate. Claimant alleged that Schwab performed a credit check on him on December 15, 1993 and that the credit check was the basis for canceling his option orders, but that Schwab failed to inform him of this credit check. Claimant alleged that this failure constituted a violation of the Fair Credit Reporting Act, 15 U.S.C. 1681. Claimant also alleged that Schwab canceled his option orders because of his Italian-American heritage. In support of this assertion, Claimant alleged that Baynum asked him on the morning of December 15, 1993 whether Claimant's last name was Italian-American and whether Claimant was in the mafia. Claimant alleged that Schwab violated the Equal Credit Opportunity Act, 15 U.S.C. 1691, and the Civil Rights Act, 42 U.S.C. 1981. Claimant also alleged that Schwab denied him checking and VISA privileges in his account with Schwab. Claimant alleged that this conduct by Schwab constituted the tort of intentional infliction of emotional distress. As a result of the above, Claimant alleged that he suffered damages.

Respondents denied all allegations of wrong-doing asserted in the Statement of Claim. Respondents maintained that the only contracts between Schwab and Claimant were a Schwab One Agreement attached to the Claimant's Schwab One Account Application and an Option Agreement attached to Claimant's Schwab Option Trading Application. Respondents maintained that pursuant to the terms of these agreements, Schwab had the absolute right to cancel Claimant's option orders. Respondents further maintained that Claimant provided false and misleading information on the Schwab One Account Application and the Schwab Option Trading Application regarding his financial status and trading experience. Respondents maintained that Schwab had the right to cancel Claimant's orders when it determined that the trades were not appropriate for him. Further, Respondents maintained that Schwab was entitled to cancel Claimant's option orders because Claimant lied on his applications. Respondents maintained that the decision to cancel Claimant's orders was based only on suitability. Respondents denied that Schwab canceled Claimant's option orders because of a credit check and further denied that Schwab even received any information from a credit check on Claimant on December 15, 1993. In addition, Respondents maintained that Claimant's Italian-American heritage, if even known to Schwab, had nothing whatsoever to do with the cancellation. Respondents maintained that Baynum was not in Schwab's office at the time that Claimant alleged the comment about his Italian-American heritage was made. Respondents further maintained that their conduct was neither extreme nor outrageous and could not give rise to a claim of intentional infliction of emotional distress. Respondents maintained that Claimant was denied VISA and check writing privileges in his Schwab One Account because he lied on his account applications and later because of a significantly negative credit report received by Schwab on January 3, 1994. Respondents further maintained that Claimant could have withdrawn the money deposited with Schwab at any time after December 15, 1993 and could have purchased the options at a later date at a price only slightly more in one case, and in the other cases, the same or less, than what he could have paid on December 15, 1993. Respondents maintained, and Claimant did not deny, that starting on December 16, 1993, Claimant maintained a mutual fund account with Schwab and actively traded in it.

### RELIEF REQUESTED

Claimant requested relief in the amount of \$150,112 in lost profits, \$75,000 in attorney's fees, \$5,000,000.00 (\$5 million) in compensatory damages and emotional pain and suffering on the negligence claim, as well as \$15,000,000.00 (\$15 million) in punitive damages.

Respondents requested that the Claim be dismissed in its entirety and that Claimant pay Respondents' costs of defense.

### OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in 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 originals 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. That Claimant's claim for damages is denied. This panel finds in favor of Respondents. The panel finds that Claimant failed to overcome the Suitability Rule required of a securities dealer by the stock exchanges for a Customer's Eligibility for Options Trade; Chicago Board of Options Exchange, 9.7(b), 9.8(a) and New York Stock Exchange Option Rules 721(b), and 722. The panel further finds that Respondent Schwab's Option Trading Application, as completed and executed by Claimant, clearly provides for the action taken by Respondents.
2. That each party is to pay its own costs and expenses, including attorney's fees, except as specifically addressed in other costs and forum fees below.
3. That any and all relief not specifically addressed herein is denied.

### OTHER COSTS

The parties agreed during the Administrative Conference that additional compensation shall be paid to each arbitrator in the amount of \$350.00 per day for each day of the hearing, as well as the direct expenses of the arbitrators relevant to their participation in the hearing. The panel directs that, pursuant to the agreement of the parties, the compensation and expenses shall be assessed at fifty percent to Claimant and fifty percent to Respondent. Therefore, Claimant is assessed \$1,312.50 for arbitrator compensation and \$792.58 in direct arbitrator expenses. In addition, Respondents, jointly and severally, are assessed \$1,312.50 for arbitrator compensation and \$792.58 in direct arbitrator expenses.

**FORUM FEES**

Pursuant to Rule 10332(c) (formerly Section 43) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

5 sessions x \$1,500.00 = \$7,500.00

Forum Fees are assessed at \$3,750.00 to Claimant and \$3,750.00 to Respondents, jointly and severally. Claimant is to receive credit for the \$1,500.00 previously submitted to the NASD Regulation, leaving a net assessment for Claimant of \$2,250.00.

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

**DATE**

**CONCURRING ARBITRATORS' SIGNATURES**

12/17/96

Jeff R. Truluck

Jeff R. Truluck, Chairman  
Public Arbitrator

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Paul A. Yates  
Public Arbitrator

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Jack C. Aycock  
Industry Arbitrator

Date Decision Served by NASD Regulation:

December 23, 1996

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Jeff R. Truluck, Chairman  
Public Arbitrator

12/16/96

Paul A. Yates  
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Jack C. Aycock  
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Public Arbitrator

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12-14-96

Jack C. Aycock  
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December 23, 1996