

**AWARD**

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

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*In the Matter of the Arbitration Between*

*Name of Claimant/Counter-Respondent*

*Charles Schwab & Company, Inc.*

95-04088

*Name of Respondent/Counter-Claimant*

*Frederick M. Kalita*

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**REPRESENTATION**

*For Claimant/Counter-Respondent: Charles Schwab & Co., Inc. ("Schwab") was represented by Jill Thompson Calian, Esq. of Sonnenschein Nath & Rosenthal, located in Chicago, Illinois.*

*For Respondent/Counter-Claimant: Frederick M. Kalita ("Kalita") was represented by Kenneth F. Berg, Esq. of Chicago, Illinois.*

**CASE INFORMATION**

*Statement of Claim filed: August 25, 1995.*

*Claimant/Counter-Respondent's Submission Agreement signed on: August 21, 1995 by Anita Max, Assistant Corporate Secretary, Charles Schwab & Co., Inc.*

*Statement of Answer/Counter-Claim filed by Respondent/Counter-Claimant Kalita on: November 2, 1995.*

*Kalita's Submission Agreement signed on: October 30, 1995.*

*Schwab's Response to the Counter-Claim filed: November 28, 1995.*

**HEARING INFORMATION**

*Pre-Hearing Conference: None Held.*

*Hearing Dates/Sessions: November 14, 1996 for Two (2) sessions; and  
November 15, 1996 for Two (2) sessions.*

*Hearing Location: Chicago, Illinois.*

**CASE SUMMARY**

*Schwab alleged that as a result of the decline in the price of Interdigital Communications Corp. ("IDC") stock, Schwab liquidated the stock in Kalita's account to cover a margin deficiency. After the initial margin call, Kalita deposited a check for \$100,000 to cover the call. However, he stopped payment on*

*the check. After the liquidation and stoppage of payment of the check, there existed a debit balance in Kalita's account of \$174,939.09. Payment was demanded, but Kalita refused payment. Therefore, Schwab brought action for breach of contract based upon Kalita's breach of his account agreement with Schwab executed on April 25, 1991.*

*Kalita denied owing any sums under the claim, asserting that:*

- 1. Schwab was aware that Kalita was a person of substantial means who could meet any margin obligation. In fact, Kalita's account was placed in Schwab's "500 Primary Team", which consisted of selected brokers in the United States who handle high net worth and high volume customers;*
- 2. As of March 30, 1995, Kalita owned 126,100 shares of IDC. There were no other positions in the account;*
- 3. On March 29, 1995, after announcement that trading was suspended after release of a news announcement that IDC lost an important lawsuit, Kalita called a Kelly George, an employee of Schwab, to determine the status of his account and determine if any money was required to cover a margin call;*
- 4. When advised that the amount of the margin call was unknown until it was certain what price IDC would open for trading, Kalita suggested that he would deposit \$100,000.00 in his account. In addition, he advised Goerge that if more funds were required, they should contact Kalita and not liquidate positions in his account. Kalita was advised that George was aware of this ability to cover the call and that he would be informed of the amounts due when the information became available;*
- 5. Kalita delivered the check on March 30, 1995. Conversations continued between George and Kalita, and George was again reminded of Kalita's ability to satisfy any margin obligation, both verbally and in writing; and*
- 6. On March 31, 1995, trading resumed and Schwab was able to determine the funds Kalita was to pay into his account. At 9:30 AM on March 31, 1995, Kalita received a call from Schwab (presumably the margin department) which instructed him to call immediately. Kalita returned the call immediately and was informed by George that Schwab had already liquidated Kalita's position in IDC. As a result of Schwab's breach of their agreement, Kalita stopped payment on the check.*

*Kalita brought a counterclaim for the wrongful liquidation and breach of the promises and assurances made to him. Schwab denied the allegations of the counterclaim, alleging the Kalita was informed of a "fed call" on his account on March 28, 1995, no one at Schwab ever represented that they would not liquidate his account, and that Kalita never even requested that the account not be liquidated, only making a vague reference to an open line of credit he had available. In addition, Schwab asserted several affirmative defenses.*

**RELIEF REQUESTED**

*Schwab requested entry of an award against Kalita in the sum of \$181,512.33 plus accrued interest. In addition, Schwab requested that the counterclaim be denied.*

*Kalita requested that Claimant be ordered to restore his account to the status quo as of the morning of March 31, 1995, and if any additional margin obligation should arise as a result of this action, that Kalita would satisfy that obligation. Kalita further requested that the panel order any other damages against Schwab as it sees fit, including an award of attorneys' fees and costs.*

**OTHER ISSUES CONSIDERED & DECIDED**

*By a letter for Schwab dated July 2, 1996, the Office of Dispute Resolution was notified that the parties had settled the matter in principal. However, on July 23, 1996, Schwab notified the Office of Dispute Resolution that the settlement had been abandoned and that hearing originally scheduled for July 10, 1996 would have to be rescheduled.*

*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 Office of Dispute Resolution.*

**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. Respondent/Counter-Claimant Frederick M. Kalita is liable for and shall pay to Claimant/Counter-Respondent Charles Schwab & Co., Inc. the sum of \$130,000.00;*
- 2. Respondent/Counter-Claimants Frederick M. Kalita's Counterclaim is hereby dismissed with prejudice and denied in its entirety;*
- 3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and*
- 4. Any relief not specifically awarded is hereby denied.*

**OTHER COSTS**

*The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$350.00 member surcharge paid by Charles Schwab & Co., Inc. pursuant to Section 10333 of the Code of Arbitration Procedure.*

**FORUM FEES**

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

*Four (4) hearing sessions x \$750.00 per session = \$3,000.00.*

*The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$500.00 claim filing fee and the \$400.00 hearing session deposit paid by Charles Schwab & Co, Inc. Charles Schwab & Co., Inc. is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$1,100.00 as forum fees. Frederick M. Kalita is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$1,500.00 as forum fees. In addition, Frederick M. Kalita is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$250.00 required to be paid as the claim filing fee pursuant to Section 10332 of the Code of Arbitration Procedure.*

*Concurring Arbitrators' Signatures*  
*Name*

*Date*

*/s/ Colleen Grace, Esq.*  
*Colleen Grace, Esq.*  
*Public Arbitrator*  
*Chairperson*

*January 7, 1997*

*/s/ Thomas F. Mahoney, Esq.*  
*Thomas F. Mahoney, Esq.*  
*Public Arbitrator*

*December 19, 1996*

*/s/ Brian E. Slotky*  
*Brian E. Slotky*  
*Industry Arbitrator*

*December 20, 1996*

*For Dispute Resolution Use Only*  
*Date of Decision: January 8, 1997*