

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration Between

Name of Claimants

Tony O. Miceli and Ann Lucchesi

95-04715

Name of Respondent

Charles Schwab & Company, Inc.

---

CASE SUMMARY

In a case filed with the National Association of Securities Dealers, Inc. on October 5, 1995, claimants Tony O. Miceli and Ann Lucchesi ("claimants"), who appeared Pro Se, alleged that respondent Charles Schwab & Co., Inc ("respondent") sold their position in an option after telling the claimants that their order to sell had been canceled. Claimants further alleged that on June 3, 1991, they put in an order to sell 55 June 60 AMR Calls at 9:39 a.m.. Claimants also alleged that one of the respondent's brokers told them that the market had not opened yet. Claimants asserted that they called back at 9:44 a.m. the same morning to see if the order had been filled. Claimants further asserted that the respondent's broker had informed them that the market was still not opened. Claimants also asserted that it was at this time that they instructed the broker to cancel the sell order. Claimants contended that respondent's broker told them that the order would be canceled. Claimants further contended that later that day the option had increased "over \$6,000.00" in value. Claimants also contended that they instructed the broker to sell their position, and that the broker informed them they had already sold their position. Claimants alleged that they spoke to a manager informing him that the broker said the morning order had been canceled. Claimants further alleged that respondent's office manager informed them that Charles Schwab normally records conversations, but this office did not have recorded telephone lines.

Respondent Charles Schwab & Co., Inc. ("Schwab"), through its representative and case manager, Joseph Tieger, maintained that at 9:39 a.m. on June 3, 1991 claimants, placed a day order to sell 55 June 60 AMR Call Options. Respondent further maintained that claimants sell order was immediately routed to the American Stock Exchange ("AMEX"), where it was promptly executed by 9:45 a.m. at the limit price. Respondent also maintained that after the sell

ordered was executed, claimants placed a second call to Schwab attempting to cancel the sell order. Respondent's contended that Brian Hale, a Registered Representative who took the order, attempted to cancel the sell order but was informed by AMEX that it was too late. Respondent further contended that any attempt to cancel a prior order is contingent on that order not yet having been executed. Respondent also contended that AMEX delayed reporting to Schwab the execution of the sell order until 10:24 a.m.. Respondent maintained that as a result of the delay they were unable to determine at 10:04 a.m. whether or not the prior order had already executed and told the claimants so. Respondent further maintained that this claim is completely frivolous and predicated on the erroneous supposition that an untimely request to cancel a prior sell order can retroactively render void the prior execution of that sell order.

### **RELIEF REQUESTED**

Claimants Tony O. Miceli and Ann Lucchesi requested \$9,500.00, plus punitive damages.

Respondent Charles Schwab & Co., Inc. requested that the claim of the claimants be dismissed in its entirety.

### **AWARD**

Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Stuart S. Perlman, Esq., was selected to review the matter in controversy between the parties set forth in submission to Arbitration signed by the claimants Tony O. Miceli and Ann Lucchesi on September 28, 1995 and by Charles Schwab & Co., Inc. on November 22, 1995.

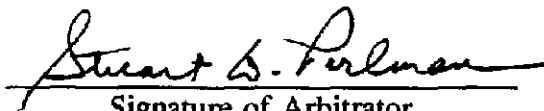
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants Tony O. Miceli and Ann Lucchesi against Respondent Charles Schwab & Company, Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc., by the Claimants shall be retained by the NASD Regulation, Inc.
4. All other requests are denied.

Page Three  
Award 95-04715

**ARBITRATOR'S SIGNATURE**

I, STUART D. PERLMAN, 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: November 27, 1996