

2/16
AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

David Churchill

and

9504729

Name of Respondent

Charles Schwab & Co., Inc.

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REPRESENTATION OF PARTIES

David Churchill ("Claimant") was represented by J. Leo Federman, Investors Rights Association, Inc., and Dermis G. Merenbach, Esq., Santa Barbara, California.

Charles Schwab & Co., Inc. ("Respondent") was represented by Eric L. Hilty, Esq., Holland & Hart, LLP, Denver, Colorado.

CASE INFORMATION

The Statement of Claim was filed on or about October 6, 1995. Submission Agreement of Claimant David Churchill was signed on June 19, 1995.

Statement of Answer was filed by Respondent Charles Schwab & Co., Inc. on or about February 12, 1996.

HEARING INFORMATION

The hearing was held on Thursday, August 22, 1996 in Denver, Colorado for a total of two (2) sessions.

CASE SUMMARY

Claimant alleged that Respondent violated the broker-client relationship; breached its fiduciary duty; was negligent; engaged in breach of contract; and violated NASD Rules of Fair Practice. Specifically, Claimant alleged that on February 4, 1994, he placed an order to sell 160 OEX February 435 puts that he had purchased several days earlier. Claimant alleged that the order to sell

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was at a price of 1 5/8 and the time stamp was 11:34. At 11:45, Claimant alleged he placed an order to cancel the sell order. The time stamp on the cancellation was 11:59. Claimant further alleged that he attempted to place another order to sell the puts with a time stamp of 12:56 with the earlier order to sell appearing to be cancelled. Claimant finally stated that at approximately 1:40 he attempted to cancel the last order. At that time, Respondent's systems reported that the earlier order had been filled at 1:15 and the last order to sell cancelled at 1:17.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that it had investigated the matter and had concluded that due to computer system problems the cancellation request for the Claimant's second order was delayed in getting to the Exchange. As a result of the delay the second order was executed and the third order canceled to prevent overselling in the account. Respondent's investigation also concluded that had the second order been cancelled the third order remained open since the request to cancel it had been received too late. Respondent further stated that even without the system delay, the Claimant would have sold his options at a price of 1 13/16.

RELIEF REQUESTED

Claimant requested an award as follows:

- ▶ for rescission of all investment interests, if applicable;
- an award of compensatory damages in the amount of \$33,000 caused as a result of economic losses, less distributions or mitigations if applicable;
- pre-award and post-award interest from the date of the original investments as allowed by law;
- for costs of arbitration and expenses, including but not limited to, reasonable attorneys fees, consulting fees, expert witness fees, and any other costs deemed reasonable and just;
- for punitive damages and exemplary damages in a sum sufficient to properly punish and make an example of the brokerage firm; and for such other and further relief as the arbitrators deem just and equitable.

Respondent requested that the claims asserted against it be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Charles Schwab & Co., Inc. did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to §10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and offered testimony at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with NASD Regulation, Inc. 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. The claims asserted in this matter shall be and hereby are dismissed and denied in their entirety.
2. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each prehearing conference, if any. There were two (2) sessions, $\times \$400 = \800 in forum fees. Pursuant to § 10332(b), 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 § 10332(c) of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$120 and shall retain as forum fees the hearing session deposit in the amount of \$400 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the Claimant David Churchill. Claimant David Churchill shall be and hereby is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the sum of \$400 as the balance due for forum fees.

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Pursuant to § 10333 of the NASD Code of Arbitration Procedure, NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$200. Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

/s/ Reid A. Godbolt, Esq.

August 22, 1996

Reid A. Godbolt, Esq.

Public Arbitrator, Presiding Chair

/s/ Devereux C. Josephs

August 22, 1996

Devereux C. Josephs

Public Arbitrator

/s/ Richard M. Reider

August 23, 1996

Richard M. Reider

Industry Arbitrator