

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

Steven L. Sillyman, and
Marcia A. Sillyman,
Claimants,

vs.

No. 96-00372

Charles Schwab & Co., Inc.,
Respondent.

REPRESENTATION OF PARTIES

Claimants Steven L. Sillyman and Marcia A. Sillyman ("Claimants") were represented by Rosemary J. Shockman, Esq. and John N. McKeegan, Esq., of Shockman & McKeegan, Scottsdale, Arizona.

Respondent Charles Schwab & Co., Inc. ("Respondent") was represented by Michael J. Lawson, Esq. and Gregory Scanlon, Esq., of Steefel Levitt & Weiss San Francisco, California.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about January 24, 1996. Claimants' Submission Agreements were signed on January 17, 1996.

Respondent's Statement of Answer was filed on or about April 10, 1996. The NASDR, Inc. Office of Dispute Resolution does not have a record of Respondent's Submission Agreement on file.

HEARING INFORMATION

The hearing was held on January 13, 14, 15, and 16, 1997 for two (2) sessions each day. The hearing was held in Scottsdale, Arizona.

CASE SUMMARY

Claimants alleged that Respondent's conduct gave rise to the following claims: Negligence; violation of the Arizona Securities Statute, A.R.S. §44-1991; breach of contract; and breach of contractual covenant of good faith and fair dealing. Specifically, Claimants alleged that: Respondent purported and professed to handle the exercise of Mr. Sillyman's employee stock options from his employer, Intel; Respondent instructed Mr. Sillyman to fill out and sign paperwork for exercise of the options, including a Notice of Intent to Exercise (the "Notice") the options; Respondent kept the originals and gave Claimants no copies; Respondent did not transmit the Notice to Intel, but merely retained it in Respondent's files; when Mr. Sillyman later called to inquire of Respondent, he was assured of the status of the exercise of the Intel options; and the time to exercise the options expired while the Notice lay in Respondent's files.

Unless expressly admitted in its Answer, Respondent denied each and every allegation contained in the Statement of Claim. Respondent additionally asserted that: Claimants' assertion that Respondent's failure to provide Intel with Schwab internal paperwork caused Claimants' options to expire ignores both Mr. Sillyman's own behavior and the clear terms of the Schwab documents executed by Mr. Sillyman; Mr. Sillyman knew from past experience that the Intel documents had to be executed, and the Statement of Claim acknowledges that he picked up the Intel exercise forms on April 27, 1995; and in completing the Schwab documents, Mr. Sillyman expressly undertook the responsibility to contact Intel to ensure that the exercise was effected.

RELIEF REQUESTED

In their Statement of Claim, Claimants requested an award be assessed against Respondent in the amount of: A minimum of \$159,475; and interest and attorneys' fees pursuant to A.R.S. §§44-2002 and 12-341.01.

Respondent requested that Claimants' claim be denied.

OTHER ISSUES CONSIDERED & DECIDED

The NASDR, Inc. Office of Dispute Resolution does not have a record of Respondent's Submission Agreement on file. However, Respondent 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 testified 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

(1) Respondent Charles Schwab & Co., Inc. is liable for and shall pay to the Claimants, Steven L. Sillyman and Marcia A. Sillyman, the sum of \$191,873.12 as an award of compensatory damages together with interest thereon at the rate of 10% per annum commencing January 16, 1997.

(2) Respondent Charles Schwab & Co., Inc. is liable for and shall pay to the Claimants, Steven L. Sillyman and Marcia A. Sillyman, the sum of \$8,695.88 as an award of expenses incurred with this arbitration.

(3) Respondent Charles Schwab & Co., Inc. is liable for and shall pay to the Claimants, Steven L. Sillyman and Marcia A. Sillyman, the sum of \$750 as an award of Claimant's deposit paid with the commencement of this arbitration. Claimants' request for attorneys' fees is denied. With specific reference to the claim for attorney fees, Claimant relied exclusively on Arizona Statute A.R.S. §44-1991. Cases within the ambit of the statute, however, are limited to causes in which

the party injured seeks to have the transaction in question rescinded and the consideration paid restored. No such cause of action was asserted here. Rather, Claimants contended, and the arbitrators found, that Respondent was negligent in failing to forward the issuing corporation Claimants' notice of intent to exercise options and in failing to advise Claimants that the notice furnished to them by Respondent was not acceptable by the issuing corporation. The Arizona statute cited and relied on by Claimants to support an award of attorneys' fees is not applicable to a cause of action in damages for negligence.

(4) That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were six (6) sessions x \$750 = \$4,500 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 \$200 and shall **retain** as forum fees the hearing session deposit in the amount of \$750 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by Claimants.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, Respondent shall pay to NASD Regulation, Inc. Office of Dispute Resolution the non-refundable member surcharge in the amount of \$350.

Additional forum fees in the amount of \$3,750 are assessed by the arbitrators against the Respondent.

Fees are payable to NASD Regulation, Inc. Office of Dispute Resolution.

Dated:

Donald B. Clark
Donald B. Clark
Public Arbitrator, Presiding Chair

/s/

February 27, 1997

Louis M. Parker
Louis M. Parker
Public Arbitrator

/s/

February 27, 1997

Marc Faigus
Marc Faigus
Industry Arbitrator

/s/

February 27, 1997