

AWARD

**NASD, Regulation, Inc.,
Office of Dispute Resolution**

In the Matter of the Arbitration Between

Dennis M. Zetter
Marilyn Zetter

Claimants

NASD Regulation, Inc.
No. 96-00591

v.

Charles Schwab & Company, Inc.
George H. Reeves

Respondents

REPRESENTATION OF PARTIES

Dennis M. Zetter and Marilyn Zetter ("**Claimants**") were represented by Randy E. Thomas, Esq., Law Offices of Randy E. Thomas, Stockton, California.

Charles Schwab & Company, Inc. and George H. Reeves ("**Respondents**") were represented by Michael J. Lawson, Esq. and Joseph E. Floren, Esq., Steefel Levitt & Weiss, San Francisco, California.

CASE INFORMATION

Claimants' Statement of Claim was filed on or about February 5, 1996. Claimants' Submission Agreement was signed on January 31, 1996. Claimants First Amended Statement of Claim was filed on May 10, 1996.

Respondents' Joint Statement of Answer was filed on or about April 10, 1996. The Joint Statement of Answer to the Amended Claim was filed on June 14, 1996. The Submission Agreement for Charles Schwab & Company, Inc. was signed on April 10, 1996. The Submission Agreement for George H. Reeves was signed on March 4, 1996.

HEARING INFORMATION

Pre-hearing conferences were held on:

September 26, 1996	1 Session;
October 30, 1996	1 Session;
November 4, 1996	1 Session.

The hearing was held in San Francisco, California on the following dates:

November 11, 1996	2 Sessions;
November 12, 1996	2 Sessions;
November 13, 1996	2 Sessions;
November 14, 1996	2 Sessions;
December 11, 1996	2 Sessions;
December 12, 1996	3 Sessions.

CASE SUMMARY

Claimants allege that the Respondents fraudulently induced them to misstate their previous trading experience in order to have their options agreement approved and proceeded to allow the Claimants to pursue an aggressive options strategy, and in some instances even encouraged such trading, even though Claimants' account was in federal call status. Claimants further allege that by opening and approving the Claimants' option account, Respondents created a duty to advise the Claimants of the suitability of the investments traded in this account. Additionally, Claimants allege that the Respondents sold out Claimants' position in a stock, Caldor Corporation, to meet a margin call without first properly advising the Claimants of the amount due and providing Claimants due time to meet the call, which was contrary to Respondents' prior custom of allowing Claimants three days to meet a margin call.

Respondents deny the allegations set forth in the Amended Statement of Claim. Respondents specifically argue that no obligation existed to allow the Claimants three days' notice prior to liquidating any stocks to meet a margin call and Respondents further argue that they were entitled to take action to satisfy the margin deficiency without any notice. Respondents further argue that the Claimants failed to take any action to mitigate any damages they may have suffered.

RELIEF REQUESTED

Claimant requests an award in the amount of \$500,000 in compensatory damages and \$10,000,000 in punitive damages. Additionally, Claimants request attorneys fees and costs.

Respondents request that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys fees.

OTHER ISSUES CONSIDERED & DECIDED

The Chairman determined that the pre hearing conference on October 26, 1996 would not be assessed to the parties as forum fees.

The Claimants withdrew, prior to the hearing, all claims against George Reeves.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains 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. Each and every claim of the Claimants is denied; and
2. Claimants request for punitive damages is denied; and
3. The costs associated with the tape analysis conducted by Steve Cain & Associates are to be born by the Respondents. At the time of this award those costs stand at \$5,000.00.

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 13 hearing sessions x \$750 plus 2 pre hearing conferences x \$300 = \$9,600 in forum fees. Pursuant to §43(b) of the NASD Regulation, Inc., Office of Dispute Resolution Code of Arbitration Procedure (the "Code"), 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 § 43(c) of the Code of Arbitration Procedure, the parties shall divide the forum fees 75%-25%, with the claimant bearing 75%, and the respondent bearing 25%.

Total Fees

13 Hearing Sessions @ \$750.00 =	\$9,750.00
2 Pre Hearing Conf. @ \$300.00 =	\$ 600.00
Total	<u>\$10,350.00</u>

Claimants' 75% share	\$7,762.50
Claimants' credit for deposit	<u>\$ 750.00</u>
Claimants' Balance	\$7,012.50

Respondent's 25% share	<u>\$2,587.50</u>
Respondent's Balance	\$2,587.50

Pursuant to §43(c) of the Code, NASD Regulation, Inc. 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. by the Claimant Dennis M. Zetter and Marilyn Zetter.

Pursuant to §45 of the Code, the NASD shall retain the member surcharge fee in the amount of \$350.00 previously paid by Charles Schwab & Company.

Fees are payable to the NASD, Regulation, Inc.

Dated:

Robert L. Lin, Esq.
Public Arbitrator, Presiding Chair

Terry Lloyd, CPA
Public Arbitrator

James R. Dickson
James R. Dickson
Industry Arbitrator

1/8/97

Date Served: January 8, 1997

NASD Arbitration No. 96-00591

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Robert L. Liu, Esq.

Public Arbitrator, Presiding Chair

Robert L. Liu

Dated:

January 6, 1997

Terry Lloyd, CPA
Public Arbitrator

James R. Dickson
Industry Arbitrator

Date Served: January 8, 1997


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Dated:

Robert L. Liu, Esq.
Public Arbitrator, Presiding Chair



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1/6/97

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Industry Arbitrator

Date Served: January 8, 1997