

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Jeffrey G. Moore, TTEE/Maintenance Trust

96-01234

Name of Respondent

Charles Schwab & Company, Inc.

REPRESENTATION

For Claimant, Jeffrey G. Moore, TTEE/Maintenance Trust ("Claimant"), appeared Steven D. Uslander, Esq., of the law firm Littman, Krooks & Roth, P.C. located in New York, New York.

For Respondent, Charles Schwab & Company, Inc. ("Respondent"), appeared Eamonn F. Foley, Esq., of the law firm Layton, Brooks & Hecht located in New York, New York.

CASE INFORMATION

Statement of Claim filed on: March 15, 1996.

Claimant's Submission Agreement signed on: April 11, 1996.

Respondent's Statement of Answer filed on: June 24, 1996.

Respondent's supplement to the Statement of Answer filed on: October 1, 1996.

Respondent's Submission Agreement signed on: June 20, 1996.

HEARING INFORMATION

Hearing Dates/Sessions: October 29, 1996 - 2 Sessions

The hearings were held at the offices of National Association of Securities Dealers Regulation, Inc. located in New York City, New York.

CASE SUMMARY

Claimant alleged that on or about June 26, 1995 he opened a Schwab One Trust account, in the amount of \$36,742.27, with funds transferred from the principal of the trust which had previously been held in another Schwab account. Claimant contended that Erin Mitchell ("Mitchell"), an account executive, informed him that he should wait twenty four hours before placing his first trade, to insure that the funds had been transferred from one account to the other. Claimant further alleged that on June 28, 1995 he

placed an order via Respondent's Telebroker service for 5,000 shares of common stock of Imclone Systems Incorporated ("IMCL") at a purchase price of \$1 7/8 per share. Claimant also alleged that he received an order number with respect to the order. Claimant asserted that because he was an unsophisticated investor he reasonably concluded that the order number served as a confirmation that the order had indeed been placed. Claimant further asserted that he did not hear anything from Respondent with respect to the order following the Telebroker trade.

Claimant also asserted that upon receipt of his monthly statements for July, August and September, he simply placed them into a file without reviewing the statements since the account consisted solely of cash and the IMCL stock. Claimant contended that on or about October 27, 1995, he first realized that the IMCL stock purchase was not reflected on his monthly statements. Claimant further contended that he immediately contacted Respondent and was informed that the stock had never been purchased. Claimant also contended that prior to this time Respondent never informed him that the stock had not been purchased.

Claimant alleged that he attempted to resolve the matter, but to no avail. Claimant further alleged that in a letter dated December 27, 1995, Respondent admitted that it mistakenly delayed in journaling the funds from the first account to the new account, which resulted in a lack of funds in the account and prevented Respondent from purchasing the order for Claimant. Claimant also alleged that by letter dated January 4, 1996, Respondent admitted fault in failing to consummate the trade.

Claimant asserted that Respondent was negligent in the way it handled his account, in permitting and allowing his order to be cancelled, by failing to notify him of the error and by failing to notify Claimant that the order was cancelled. Claimant further asserted that Respondent breached its fiduciary duty owed to him by failing to timely journal the funds, invest the funds at his request, or inform him that the funds were not invested. Claimant also asserted that Respondent is liable for breach of contract and implied contract for not timely journaling the funds and not purchasing the stock.

Respondent maintained that on June 26, 1995, Claimant opened a Schwab One Trust account on behalf of the "Maintenance Trust Under the Will of Janet W. Gould". Respondent further maintained that, also on June 26, Claimant requested that it journal \$36,779.77 from his individual Schwab One account to the Schwab One Trust account. Respondent also maintained that there was an error in the journal instructions, causing a delay in transferring the funds into the trust account. Respondent contended that as a result, the funds were not transferred until June 30, 1995. Respondent further contended that because of the delay in the transfer, Claimant's order for 5,000 shares of IMCL was cancelled due to insufficient funds.

Respondent also contended that in early July 1995, it mailed to Claimant a copy of the June 1995 account statements for the individual and Trust accounts, showing the trade activity and journal of funds to or from the accounts during June 1995. Respondent maintained that each month during the period July 1995 through May 1996, Claimant received copies of the account statements for the Trust. Respondent further maintained that on the back of the each statement is a legend that requires a customer to report any errors or omissions on the account statement immediately upon receiving the statement. Respondent contended that on or about October 27, 1995, Claimant finally contacted Respondent for the first time with regard to the IMCL order and was informed of the cancellation. Respondent further contended that the price of the stock at that time was less than \$4.00 per share but Claimant did not place a purchase order at that time. Respondent maintained that Claimant's letter to it dated December 18, 1995, acknowledged that it took him four months to realize that the IMCL order had not been executed.

Respondent contended that on December 20, 1995, Claimant spoke with Alicia Gray ("Ms. Gray") and James Epervary ("Epervary") who offered him several options to mitigate his alleged losses, including allowing him to purchase the shares at the then current price of \$7.50 per share, with a credit of \$937.50,

which would have reimbursed him for the difference between the ask price on June 28, 1995 and the high ask price on July 25, 1995, one month later, by which time Claimant clearly should have realized that his order to purchase IMCL had not been executed. Respondent further contended that Claimant declined these options.

Respondent also contended that it concedes that it made a clerical error when transferring the funds, but denies that it was negligent or reckless in the way it handled Claimant's account. Respondent also denied that it breached its fiduciary duty to Claimant or that it breached a contract or implied contract. Respondent maintained that Claimant, on numerous occasions, failed to mitigate his losses.

Respondent, in its supplement to the Statement of Answer, maintained that on June 28, 1995, a Schwab representative left a message on Claimant's telephone answering machine requesting that he call Respondent concerning the trade.

RELIEF REQUESTED

Claimant requested compensatory damages in an uncertain sum, but is believed to exceed \$35,937.50. and for punitive damages in the sum of \$50,000.00, plus costs, interest, and attorneys' fees and any other relief that the arbitration panel deems just and proper.

Respondent requested that the claims of the Claimant be dismissed in their entirety and that if Claimant is awarded damages it should be limited to \$937.50 based upon Claimant's total and unreasonable failure to mitigate his losses.

OTHER ISSUES CONSIDERED & DECIDED

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 NASD.

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 Charles Schwab & Company, Inc. be and hereby is liable and shall pay claimant the sum of \$10,628.00.
2. Each party shall bear their respective costs, including attorney's fees.
3. All other relief requests are denied.

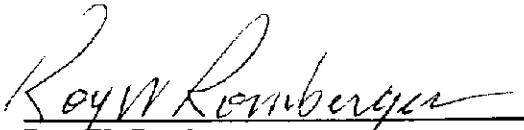
FORUM FEES

Pursuant to Section 10332 of the Code of Arbitration Procedure, the arbitrators have determined that the NASD Regulation, Inc. shall retain the \$150.00 non-refundable filing fee previously deposited by Claimant and have assessed the following Forum Fees.

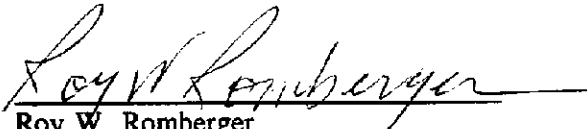
2 Sessions X \$500.00	=	\$1,000.00
minus deposit \$500.00	=	<u>\$500.00</u>
Total outstanding	=	\$500.00

Respondent Charles Schwab be and hereby is liable and shall pay to the NASD Regulation, Inc. the sum of \$500.00 representing the total amount of forum fees outstanding. Respondent Charles Schwab & Company, Inc. be and hereby is liable and shall pay to the Claimant the sum of \$500.00 as reimbursement of the forum fee deposit.

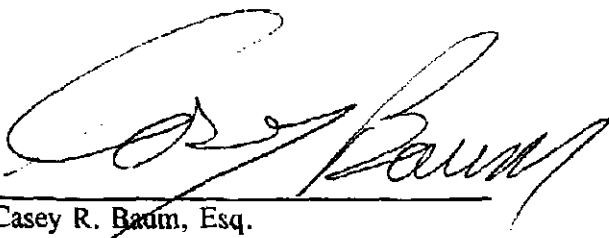
Fees are payable to the National Association of Securities Dealers, Inc.


Roy W. Romberger

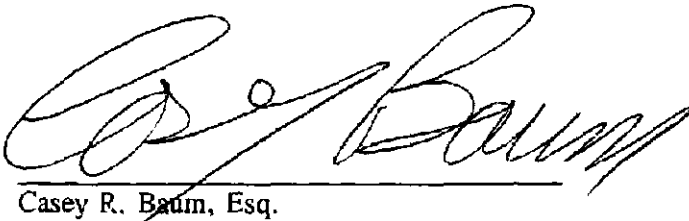
I, Roy W. Romberger, do hereby affirm that this is my decision in the above captioned matter.


Roy W. Romberger

Date of Decision: December 09, 1996

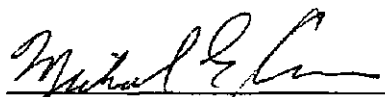

Casey R. Baum, Esq.

I, Casey R. Baum, do hereby affirm that this is my decision in the above captioned matter.


Casey R. Baum, Esq.


Date of Decision: December 09, 1996

ARBITRATOR'S SIGNATURES



Michael E. Curan, Esq.

I, Michael E. Curan, do hereby affirm that this is my decision in the above captioned matter.



Michael E. Curan, Esq.

Date of Decision: December 09, 1996