

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Edward and Nonie Weber

96-01401

Name of Respondent

Charles Schwab & Company, Inc.  
Bart Sayyah

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on March 29, 1996, claimants Edward and Nonie Weber ("claimants"), who appeared through Ed Weber ("claimant"), alleged that respondents Charles Schwab & Co., Inc. ("CSC") and Bart Sayyah ("Sayyah") failed to follow his instructions cancel a sell order. Claimant further alleged that during the first week of January 1996, he contacted CSC and that during his conversation discovered that 200 shares of Casino Data Systems ("Casino") had been sold reducing his holding to 250 shares. Claimant also alleged that he had a confirmation sheet canceling the 200 share sell order on October 18, 1995. Claimant contended that on November 2, 1995, he placed other orders and believes that the 200 shares of Casino were inadvertently sold. Claimant further contended that he complained to Bart Sayyah ("Sayyah") a few days later and was told that his discovery was untimely and suggested that he had waited to complain until after the stock had risen in value. Claimant also contended that Sayyah told him that CSC's tape recording system was inoperative at the time of the transaction so his complaint could not be verified. Claimant asserted that Sayyah's statement concerning the tape recording system is incredible because such a system is essential to CSC's business activities. Claimant further asserted that he questioned a few of CSC's employees about the malfunction and that no one supported Sayyah's statement that it was inoperative. Claimants also asserted that as a result of the above, they have suffered a loss for which the respondents should be held liable.

Respondents Charles Schwab & Co., Inc. and Bart Sayyah through their representative and in-house counsel, Gregory Scanlon, Esq., maintained that claimants asserted a claim against CSC in connection with their unsolicited order to sell 200 shares of Casino stock on November 2, 1995.

Respondents further maintained that 76 days after the sale, claimant called CSC stating that the sale was the result of CSC's execution of his previous sale order placed in September and canceled in October of 1995, which also happened to be for 200 shares of Casino. Respondents also maintained that claimants seek the difference between the sale price and what they allegedly could have received had they retained the 200 shares.

Respondents contended that claimant placed a second order on November 2, 1995, at 11:01 a.m. Respondents further contended that CSC did not execute the first sell order as alleged because it was canceled by claimants on October 18, 1995. Respondents also contended that claimant placed 5 orders in conjunction with his order to sell 200 shares of Casino. Respondents asserted that the order was taken at 11:01 a.m., executed at 11:26 a.m., and confirmed by telephone at 12:52 p.m. Respondents further asserted that the September and November Casino orders could not have been mixed up because the first was to sell at a limit of \$31.00 per share while the second was for \$17.50 limit per share. Respondents maintained that CSC would not have sold the shares for less than \$31.00 per share had the sale been pursuant to the first order yet the shares were sold for \$17.50 indicating that a second order was placed.

Respondents maintained that CSC does not have a recording of claimant's sell order because the line through which claimant placed his order was not operating the day of the sell order. Respondents also maintained that there was not a system wide problem with recording but that the malfunction was isolated to the line through which claimant placed his order. Respondents contended that as a result of the above, they should not be held liable.

#### **RELIEF REQUESTED**

Claimants Edward and Nonie Weber requested \$4,080.00 in actual damages plus \$2,000.00 in punitive damages.

Respondents Charles Schwab & Co., Inc. and Bart Sayyah requested that the claim be dismissed in their entirety.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

The arbitrator considered and reviewed all documentation submitted by the parties concerning respondent Bart Sayyah's motion to dismiss on the basis that he is not a party in interest and that this matter should be expunged from his U-4. The arbitrator granted the motion dismissing this claim against respondent Bart Sayyah. Based on the merits of this case, the arbitrator hereby orders the NASD to expunge Bart Sayyah's U-4 as to all references related to arbitration case #96-01401.

The arbitrator considered and reviewed all documentation submitted by the parties concerning respondents' request that claimants' "response" to their statement of answer be stricken from the record because the NASD Code of Arbitration Procedure does not allow for such a response. The arbitrator denied the request.

### **REPORT OF ARBITRATOR**

The issue is whether there was authority for the sale of the 200 shares of Casino stock on November 2, 1995. It is claimants' position that there was no authorization for the sale despite the fact there were three other transactions on that same date which claimants have not disputed. The evidence supports respondent's position that the sale was specifically authorized.

First, the November, 1995 statement indicates there was a sale and claimants have not denied receiving the monthly statement. Likewise, confirmation slips were sent to the claimants and claimants have not denied receiving them. The December, 1995 statement shows the claimants owned less Casino stock and claimants have not denied receiving this statement. Schwab's order file indicates the sale of 200 shares was entered on November 2, 1995, and that the sale was confirmed by telephone to Mrs. Weber. The claimants have not denied such a telephone call took place.

It does not appear that the earlier sale order entered in September of 1995, and later canceled on October 18, 1995, had any relevance to the November 2, 1995, purchase order.

### **AWARD**

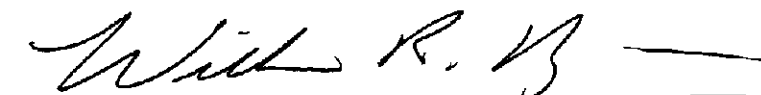
Pursuant to Section 10302 of the NASD, Inc. Code of Arbitration Procedure, a single Public Arbitrator, William Urga, Esq., was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimants on March 25, 1996, respondent Charles Schwab & Company, Inc. on October 7, 1996, and respondent Bart Sayyah on August 20, 1996.

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 the claimants Edward and Nonie Weber against respondents Charles Schwab & Company, Inc. and Bart Sayyah are denied in their entirety.
2. Based on the merits of this case, the claims of the claimants Edward and Nonie Weber against respondent Bart Sayyah shall be expunged from Bart Sayyah's U-4 by NASD Regulation, Inc.
3. The parties shall bear their respective costs and attorney's fees.
4. 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.

**AFFIRMATION**

I, William Urga, 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.

A handwritten signature in cursive script, appearing to read "William R. Urga", followed by a horizontal line.

Signature of Arbitrator

DATE OF DECISION: February 5, 1997