

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Fernando A. Magadan,

Claimant,

v.

No. 96-01474

Charles Schwab & Co., Inc.,

Respondent.

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### **REPRESENTATION OF PARTIES**

Claimant Fernando A. Magadan represented himself.

Respondent Charles Schwab & Co., Inc. was represented by Gregory M. Scanlon, Esquire, of Charles Schwab & Co., Inc., located in San Francisco, California.

### **CASE INFORMATION**

Claimant Fernando A. Magadan's Statement of Claim was filed on or about April 4, 1996. Claimant Fernando A. Magadan's Submission Agreement was signed on April 1, 1996.

Respondent Charles Schwab & Co., Inc.'s Statement of Answer was filed on or about June 25, 1996. Respondent Charles Schwab & Co., Inc.'s Submission Agreement was signed on October 11, 1996, by Linda Drucker, Senior Corporate Counsel of Charles Schwab & Co., Inc.

### **HEARING INFORMATION**

No pre-hearing conferences were held.

The hearing was held on November 18, 1996, for two (2) sessions.

The hearing was held in Minneapolis, Minnesota.

### **CASE SUMMARY**

Claimant Fernando A. Magadan ("Claimant") alleged that respondent Charles Schwab & Co., Inc. ("Respondent") made an unauthorized purchase in his account and has failed to return funds to him from the sale of other securities from his account. According to Claimant, on January 30, 1996, Claimant placed a telephone order for 500 shares of CNS, Inc. stock trading at \$18.25 per share on Respondent's tele-broker service. Claimant asserted, however, that he hung up with the tele-broker service without completing his order and without any confirmation that he had purchased the 500 shares. Claimant stated that later that day Respondent contacted him to confirm a purchase of 5000 shares of CNS, Inc. in Claimant's account; at this time Claimant informed Respondent that he did not place the order, and that had Respondent received the order, it was only for 500 shares. Claimant further asserted that he spoke with several different people at Respondent this same day, but that he was led to believe that they were trying to correct the mistake, until that evening when they informed him that the 5000 shares of CNS, Inc. were his, and that he could not sell the shares. Claimant also stated that by the next day CNS, Inc. stock had fallen to \$16.00 per share and that he was hesitant to liquidate the shares because he felt that he would be admitting that the shares were his and that he would be losing a lot of money. However, according to Claimant, on February 6, 1996, he sold all of the 5000 shares of CNS, Inc. In addition, Claimant stated that he sold 1500 shares of CNS, Inc. stock he already owned and 100 shares of Beam stock, both of which he expected full payment from. Claimant calculated his damages as totaling \$17,525.90.

Respondent denied the allegations set forth in the Statement of Claim. Respondent stated that Claimant confirmed his purchase order of 5,000 shares of CNS, Inc. Respondent also stated that the proceeds from the sale of the 1500 shares of CNS, Inc. stock Claimant already owned and the 100 shares of Beam (Summit Technology, Inc.) stock were applied to cover the debit balance resulting from his 5,000 share sale of CNS, Inc. stock. Respondent further stated that Claimant failed to mitigate his damages by not selling the 5,000 shares of CNS, Inc. stock upon learning that his order had been executed.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$17,525.90 for compensatory damages.

Respondents requested that the claims asserted against them be denied in their entirety.

### **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 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 claim is denied in its entirety with prejudice; and
2. That other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$300 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there were two (2) hearing sessions x \$300 = \$600 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 \$100 and shall retain as forum fees the hearing session deposit in the amount of \$300 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by claimant Fernando A. Magadan.

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 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by respondent Charles Schwab & Co., Inc.

Respondent Charles Schwab & Co., Inc. is liable for and shall pay forum fees in the amount of \$300  
(= 1/2\$600 total forum fees).

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

Concurring Arbitrators:

Dated:

/s/ A. James Dickinson  
A. James Dickinson, Esquire  
Public Arbitrator, Presiding Chair

January 3, 1997

/s/ Mark S. Gleason  
Mark S. Gleason, Esquire  
Public Arbitrator

January 7, 1997

/s/ Lawrence J. Welte  
Lawrence J. Welte  
Industry Arbitrator

January 7, 1997