

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of the Arbitration Between

S. Bowman Reid,

Claimant,

v.

No. 96-02229

Charles A. Schwab & Co., Inc.,

Respondent.

REPRESENTATION OF PARTIES

Claimant S. Bowman Reid was represented by Robert L. Crawford, Esquire of Wyatt, Tarrant & Combs, located in Memphis, Tennessee.

Respondent Charles A. Schwab & Co., Inc. was represented by Angela G. Miele, Esquire of Kutak Rock, located in Atlanta, Georgia.

CASE INFORMATION

Claimant S. Bowman Reid's Statement of Claim was filed on or about May 24, 1996. Claimant S. Bowman Reid's Submission Agreement was signed on May 23, 1996.

Respondent Charles Schwab & Co., Inc.'s Statement of Answer was filed on or about July 18, 1996. Respondent Charles Schwab & Co., Inc.'s Submission Agreement was signed on July 10, 1996, by Linda Drucker, Senior Corporate Counsel of Charles Schwab & Co., Inc.

HEARING INFORMATION

The hearing was held on: December 17, 1996 for two (2) sessions.

The hearing was held in Memphis, Tennessee.

CASE SUMMARY

Claimant S. Bowman Reid ("Claimant") alleged that respondent Charles Schwab & Co., Inc. ("Respondent") made an unauthorized trade or unintended trade. Although Claimant admitted that he had experience in securities, he stated that he had almost no experience in options. Claimant

asserted that on November 6, 1995, Respondent's representative failed to correctly inform him about the pricing of options, and as a result on November 8, 1995, Claimant purchased 100 call options of Intel Corp. at a unit price of $6\frac{1}{4}$ for what he believed to be a total purchase price of about \$6,250. According to Claimant, the actual purchase price of this trade was \$62,500, excluding commission, which was funded through Claimant's margin account. Claimant further asserted that during a conversation between Claimant and Respondent's representative on the day of this trade, Claimant was informed that the options were trading at $6\frac{3}{8}$ to which Claimant commented that since they were trading at $4\frac{3}{8}$ the day before he would have saved \$2,000 by purchasing the options then. However, according to Claimant, the difference was actually \$20,000, not \$2,000, and Respondent's representative never corrected Claimant's mistaken belief as to the pricing of options. Claimant stated that when he became aware of the mistake through the trade confirmation, he contacted Respondent by phone and by letter, but Respondent refused to correct the mistake. Subsequently, Claimant stated that he attempted to mitigate his damages by exercising the option on January 2, 1996, at 5/16, for a price of \$2,958.64, net of commission paid. Claimant thus alleged damages in the amount of \$59,827.86, which is the purchase price of the securities, \$62,500, less the \$2,958.64 he received. Claimant made the following claims against Respondent: (1) breach of contract; (2) unilateral mistake; (3) mutual mistake; and (4) breach of fiduciary duty.

Respondent denied the allegations set forth in the Statement of Claim. Respondent stated that in October 1992, Claimant indicated on his option trading application that his investment objectives were growth and speculation, and that he had four years experience trading options, he made three to four option trades per year, and his knowledge of options was good. According to Respondent, Claimant further indicated, in November 1995, on his Option, Margin & Short Account Trading Application, that his objectives were growth and speculation, and that he had fifteen years of option experience with an extensive knowledge level. Furthermore, Respondent contended that Claimant acknowledged receipt of information concerning option trading and pricing before he placed the November 8, 1995, trade, and Claimant agreed that he would read the "Characteristics and Risks of Standardized Options" before he placed a trade. Additionally, Respondent stated that Claimant did not call to complain until three weeks after the confirmation of the trade had been sent out, at which time Claimant first claimed that he was confused about the pricing of options. Respondent denied that Claimant is entitled to recover damages, but even if he were, Respondent asserted that Claimant had failed to properly mitigate his damages by waiting to sell the options instead of selling them when he received the trade confirmation.

RELIEF REQUESTED

Claimant S. Bowman Reid requested: an award in the amount of \$59,827.86, including commissions paid; and an award for interest, attorney's fees, and costs.

Respondent Charles Schwab & Co., Inc. requested that the claims asserted against it 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. Charles A. Schwab & Co., Inc. is liable for and shall pay to S. Bowman Reid the sum of \$19,990 as satisfaction of his claim for compensatory damages; 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, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session. There were two (2) sessions x \$500 = \$2,000 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 \$150 and shall retain as forum fees the hearing session deposit in the amount of \$500 previously deposited with NASD Regulation, Inc. Office of Dispute Resolution by the claimant.

Pursuant to §10333 of the NASD Code of Arbitration Procedure, Charles A. Schwab & Co. is liable for and shall pay to NASD Regulation, Inc. Office of Dispute Resolution the non-refundable member surcharge in the amount of \$300.

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration No. 96-02229
Award Page 4 of 4

Additional forum fees in the amount of \$500 are assessed by the arbitrators against Charles A. Schwab & Co.

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

Dated:

Peter J. Towle
Peter J. Towle
Public Arbitrator, Presiding Chair

/s/

January 8, 1997

Donald J. Aho
Donald J. Aho
Public Arbitrator

/s/

January 13, 1997

John C. West
John C. West
Industry Arbitrator

/s/

January 8, 1997