

F

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the matter of the Arbitration Between

Name of Claimant(s)

Emile Habib

NASD Arbitration
No. 96-02360

Name of Respondent(s)

Charles Schwab & Co., Inc.

REPRESENTATION

For Claimant: Emile Habib, San Jose, California

For Respondent: Linda Drucker, Esq., Charles Schwab & Co., Inc.,
San Francisco, California

CASE INFORMATION

Statement of Claim filed: May 24, 1996

Claimant's Submission Agreement signed: May 29, 1996

Statement of Answer filed by Respondent: August 6, 1996

Respondent's Submission Agreement signed: August 5, 1996

HEARING INFORMATION

Pre-Hearing Conference Date(s)/Session(s):

December 2, 1996 (one session)

Hearing Date(s)/Session(s): December 4, 1996 (two sessions)

December 12, 1996 (one session)

Hearing Location:

San Francisco, California

CASE SUMMARY

Claimant alleged that he suffered monetary losses because he was given a wrong code by Respondent with respect to his investment in Zenith Electronics (ZE) stock.

Respondent Charles Schwab & Co., Inc. (Schwab) denied any wrongdoing with respect to Claimant's investment and alleged that on May 3, 1996, Schwab accurately repeated to its customer Emile Habib a report Schwab received from the Pacific Stock Exchange (PSE) that the low for the day for the stock of ZE was \$11. Respondent further alleged that on hearing that report and without any recommendation or advice from Schwab, Mr. Habib ordered Schwab to sell out his entire position in ZE; Schwab executed Mr. Habib's order at his limit price of 15 3/4, generating a profit for Mr. Habib of nearly \$80,000.; and that after Mr. Habib had placed his sell order, Schwab received notice from the PSE that its earlier report of a trade in ZE at \$11 was erroneous and that the trade actually occurred at \$13. Respondent further alleged that Mr. Habib is not entitled to any recovery from Schwab and that Schwab did not generate or issue an erroneous market data report; the PSE did. Respondent further alleged that as clearly stated in Mr. Habib's Account Agreement with Schwab, Schwab is not liable for errors in market data Schwab receives from exchanges like the PSE. Respondent further alleged that Mr. Habib's claimed damages are wholly speculative; and that there is no basis on which to conclude that Mr. Habib would have sold at a price more favorable than the price he actually did.

RELIEF REQUESTED

Claimant's Statement of Claim requested damages in the amount of \$47,500.00 plus interest and punitive damages. At hearing, Claimant modified his damage claim.

Respondent requested dismissal of Claimant's claims.

OTHER ISSUES CONSIDERED AND DECIDED

The parties have agreed that the Award in this matter may be executed in either 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 National Association of Securities Dealers, Inc. (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 is liable for and shall pay to Claimant the sum of \$5,000.00.

The panel found that it is Schwab's practice to have the customer sign an account agreement indicating that the customer has read and received the brokerage agreement when in fact that is not the case. The panel recommends that Schwab review this procedure. The panel also found that the computer screen regarding customer complaints is selective in that it omitted significant information relative to this complaint.

2. Claimant's claim for punitive damages is denied.

3. The parties shall each bear their respective costs including any attorney's fees.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall retain Claimant's hearing session deposit in the amount of \$400.00. Forum fees shall be split between the parties and are calculated as follows:

One pre-hearing session times \$300.00	= \$ 300.00
Three hearing sessions times \$400.00	= <u>\$1,200.00</u>
Total fees assessed	= \$1,500.00

Claimant's share (50%)	= \$ 750.00
Credit for hearing deposit	= \$ 400.00
Balance due	= \$ 350.00

Respondent's share (50%)	= \$ 750.00
Balance due	= \$ 750.00

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

ARBITRATORS

Name Public / Industry

Lester Friedman, Esq.

Public Arbitrator

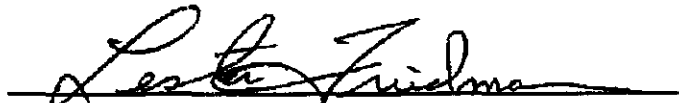
David Zebker

Public Arbitrator

Edgar N. Stone

Industry Arbitrator

Concurring Arbitrators' Signatures


Lester Friedman, Esq.

David Zebker

Edgar N. Stone

Date of Decision: 12-28-96

Date Served: January 2, 1997

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

ARBITRATORS

Name _____ Public / Industry

Lester Friedman, Esq.

Public Arbitrator

David Zebker

Public Arbitrator

Edgar N. Stone

Industry Arbitrator

Concurring Arbitrators' Signatures

Lester Friedman, Esq.

David Zebker
David Zebker

Edgar N. Stone

Date of Decision: _____

Date Served: January 2, 1997

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

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
Lester Friedman, Esq.	Public Arbitrator
David Zebker	Public Arbitrator
Edgar N. Stone	Industry Arbitrator

Concurring Arbitrators' Signatures

Lester Friedman, Esq.

David Zebker

Edgar N. Stone

Edgar N. Stone

Date of Decision: 12/29/96

Date Served: January 2, 1997