

AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

In the matter of the Arbitration Between

Name of Claimant(s)

Patrick S. Nelson

Arbitration
No. 96-02517

Name of Respondent(s)

Charles Schwab & Co., Inc.
John Williams

REPRESENTATION

For Claimant: Jeffrey L. Silvestrini, Esq., Cohn, Rappaport & Segal, P.C., Salt Lake City, Utah

For Respondents: Steven Lanum, Esq., Charles Schwab & Co., Inc., San Francisco, California

CASE INFORMATION

Statement of Claim filed: June 6, 1996

Claimant's Submission Agreement signed: May 15, 1996

Joint Statement of Answer filed by Respondents: August 13, 1996

Respondent Charles Schwab & Co., Inc.'s Submission Agreement signed: August 13, 1996

Respondent John Williams did not file a Submission Agreement. However, Mr. Williams appeared at the hearing and is subject to NASD Regulation, Inc. (NASDR) jurisdiction in accordance with Section 10301 of the NASDR Code of Arbitration Procedure.

HEARING INFORMATION

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

March 24, 1997 (one session)

Hearing Date(s)/Session(s): July 9, 1997 (two sessions)

July 10, 1997 (one session)

Hearing Location:

Salt Lake City, Utah

CASE SUMMARY

Claimant alleged that he suffered monetary damages because of the improper liquidation of shares of Iomega stock in Claimant's account. Claimant further alleged breach of contract or alternatively, that Respondents are liable to Claimant under the doctrine of promissory estoppel. Claimant further alleged breach of fiduciary duty.

Respondents denied Claimant's allegations of wrongdoing and alleged that Claimant is not entitled to any damages in this case. Respondents further alleged that Charles Schwab & Co., Inc. (Schwab) had the contractual right to liquidate Claimant's position in Iomega stock on February 6, 1996 to cover a margin debt of more than \$110,000 and alleged that at the time, Claimant was facing a total of \$73,000.00 in margin calls and had an equity level in his account that was significantly lower than the New York Stock Exchange's minimum requirement. Respondents further alleged that Schwab's liquidation of Claimant's position was necessary because of his repeated failure to pay for his many trades; his failure to deposit sufficient funds to meet margin calls; his admission to Schwab's branch manager that he didn't have the financial resources to meet the calls; and the concentration of his portfolio in a single highly-volatile and risky security such as Iomega. Respondents further alleged that Schwab made every effort to give Claimant the opportunity to deposit additional collateral before taking action, including leaving numerous messages at his residence and sending him several mailgrams notifying him of the need to deposit additional funds to his account. Respondents further alleged that the mailgrams expressly gave Schwab the right to liquidate at any time prior to the due date; and that under these circumstances, Schwab's liquidation of Claimant's account was entirely lawful and proper and Claimant is not entitled to damages.

RELIEF REQUESTED

Claimant requested damages in an amount to be proven at hearing and requested punitive damages.

Respondents requested that Claimant's claims be denied in their entirety.

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 NASDR.

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 & Co., Inc. is solely liable for and shall pay to Claimant the sum of \$25,000.00 in general damages.

2. Respondent Charles Schwab & Co., Inc. is solely liable for and shall pay to Claimant the sum of \$10,000.00 in attorney's fees.

3. The panel granted Respondents' Motion to Dismiss John Williams. The panel also determined that the U-4 file of John Williams shall be expunged of any reference to the above-captioned matter. The panel requests that any reference to the above-captioned matter be expunged from John Williams' records contained in the NASDR's Central Registration Depository.

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

5. The parties shall each bear their respective costs of this proceeding.

FORUM FEES

Pursuant to Section 10332(c) of the Code of Arbitration Procedure, the following forum fees are assessed: The NASDR shall retain the \$750.00 hearing session deposit previously deposited by the Claimant. Forum fees shall be split between Claimant and Charles Schwab & Co., Inc. and are calculated as follows:

One pre-hearing session @ \$750.00/session	=	\$ 750.00
Three hearing sessions @ \$750.00/session	=	<u>\$2,250.00</u>
Total fees assessed	=	\$3,000.00

Claimant's share (50%)	=	\$1,500.00
Credit for hearing deposit	=	\$ 750.00
Balance due	=	\$ 750.00

Respondent Schwab's share (50%)	=	\$1,500.00
Balance due	=	\$1,500.00

Fees are payable to NASD Regulation, Inc.

ARBITRATORS

<u>Name</u>	<u>Public / Industry</u>
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A. Robert Thorup, Esq.

Public Arbitrator

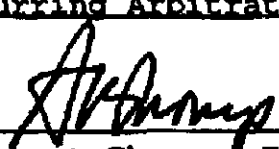
George J. Karlsven, Jr.

Public Arbitrator

James C. Abel, Jr.

Industry Arbitrator

Concurring Arbitrators' Signatures


A. Robert Thorup, Esq.

George J. Karlsven, Jr.

James C. Abel, Jr.

Date of Decision:

Aug 4, 1997

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A. Robert Thorup, Esq.	Public Arbitrator
George J. Karlsvén, Jr.	Public Arbitrator
James C. Abel, Jr.	Industry Arbitrator

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