

N.A.S.D. AWARD**NASD Regulation, Inc. Office of Dispute Resolution****In the Matter of the Arbitration Between****Name of Claimants**

Deborah Pittinos and Melissa Beecham,
as Personal Representatives of the Estate of
Alfred M. Seaber and as Trustees of the
Alfred M. Seaber Trust, Alexina Lane, as
Trustee of the Alexina Seaber Trust and
Alexina Seaber, individually, and as
beneficiary of the Alfred M. Seaber Trust

NASD CASE NO. 96-03037

Name of Respondent

Charles Schwab & Co., Inc.

REPRESENTATION

For Claimants: Mark F. Raymond, Esq. of Tew Cardenas Rebak Kellogg Lehman DeMaria & Tague, L.L.P., Miami, Florida and John H. Schulte, Esq. of Schulte & Bisbing, Miami, Florida.

For Respondent: Burton W. Wiand, Esq. of Fowler, White, Gillen, Boggs, Villareal & Banker, P.A., Clearwater, Florida and Cameron Stout, Esq. of Keesal, Young & Logan, San Francisco, California.

For Melissa Beecham, individually: John K. Shubin, Esq. of Shubin & Bass, P.A., Miami, Florida and Ira M. Elegant, Esq. of Buchbinder & Elegant, P.A., Miami, Florida.

CASE INFORMATION

Statement of Claim filed on July 16, 1996. Claimants' Submission Agreements signed on: June 27, 1996 by Melissa Beecham, as Personal Representative of the Estate of Alfred M. Seaber and Trustee of the Alfred M. Seaber Trust; June 28, 1996 by Deborah Pittinos, as Personal Representative of the Estate of Alfred M. Seaber and Trustee of the Alfred M. Seaber Trust; June 28, 1996 by Alexina W. Seaber, individually and as beneficiary of the Alfred M. Seaber Trust; and June 28, 1996 by Alexina E. Lane, as Trustee of the Alexina Seaber Trust.

Answer To Statement of Claim and Crossclaim [sic] filed by Respondent, Charles Schwab & Co., Inc. ("Schwab") on September 27, 1996. Respondent did not file an executed Submission Agreement.

Notice of Special Appearance and Answer and Affirmative Defenses to Crossclaim filed by Melissa Beecham, individually ("Beecham") on October 17, 1997.

HEARING INFORMATION

On February 18, 1997, February 28, 1997, October 8, 1997 and October 17, 1997, telephonic pre-hearing conferences lasting one (1) session each were conducted with the Chairperson of the arbitration panel. On October 20, 21 and 22, 1997; December 8, 9 and 10, 1997; and January 6, 7, 8, 9, 26, 27 and 28, 1998, in Fort Lauderdale, Florida, hearings lasting twenty-three (23) sessions were conducted.

CASE SUMMARY

Claimants alleged that Respondent Schwab engaged in reckless and wanton conduct in violation of Florida Statutes 733.615 and 517.301, disregarded Court orders, was negligent, breached its contracts, and breached its fiduciary duties owed to Claimants. Claimants contended that as a result of Respondent's wrongful conduct, 61,410 shares of SCI Systems, Inc. ("SCI") stock was sold without authority on June 8, 1995 and as a result Claimants suffered losses, including the loss of the current value of the stock and having to pay capital gains taxes that would otherwise not have been incurred.

Respondent Schwab denied Claimants' allegations in their entirety, and denied that Claimants were damaged in any sum whatsoever. Schwab contended that Claimants failed to meet their burden of proof, including, without limitation, proof of their claims brought pursuant to Florida Statutes 733.615 and 517.301. Schwab contended that Melissa Beecham, acting as a court-appointed personal representative of the Estate of Alfred M. Seaber (the "Seaber Estate"), gave Schwab an authorized, unsolicited order to sell 61,410 shares of SCI Systems, Inc. stock held in the Seaber Estate's Schwab account. Schwab further contended that Beecham represented to Schwab orally and in writing that her co-personal representative, Deborah Pittinos (Brownell), authorized the SCI stock sale. Schwab also asserted affirmative defenses to Claimants' claims including ratification, waiver, estoppel, laches and failure to mitigate damages by, *inter alia*, failing to take action to repurchase the SCI stock following Ms. Brownell's discovery that it had been sold.

Schwab also asserted a counterclaim against Beecham in her capacity as personal representative of the Seaber Estate. Schwab contended that it was entitled to an award against the Seaber Estate and/or Beecham in her personal representative capacity based upon the conduct, including the alleged misrepresentations, of the Seaber Estate's personal representatives and each of them in connection with the sale of SCI stock and the filing of this arbitration.

Counter-Respondent Beecham maintained that no liability can attach to her individually for actions undertaken in her capacity as a personal representative of the Seaber Estate and disputed that Schwab had properly alleged any claim against Beecham as a Personal Representative. To the extent that Schwab asserted that Beecham, in her representative capacity, is legally responsible for Schwab's unlawful conduct, Beecham maintained that Schwab's unlawful conduct superseded any liability which is predicated on the alleged conduct on the part of Beecham. Beecham further maintained that Schwab failed to prove that any of the alleged acts of Beecham undertaken in her representative capacity were responsible for the losses suffered by the Claimants.

RELIEF REQUESTED

Claimants requested rescission of the unauthorized trade and, therefore, that Respondent be required to deliver to the Seaber Estate 122,820 shares of SCI Systems, Inc. stock (61,410 shares times 2 due to a 2 for 1 stock split), plus \$83,000.00 representing the capital gains tax paid by Claimants, together with interest at the prevailing rate, punitive damages, costs and attorneys' fees.

Respondent Schwab requested an award on its counterclaim against the Seaber Estate and/or Claimant

Melissa Beecham in her personal representative capacity of all damages, losses, costs and expenses incurred in Schwab's defense of the Seaber Estate's claims, including, without limitation, attorneys' and expert witness' fees in excess of \$172,000.00. Schwab also sought its attorneys' fees and costs as a prevailing party in the arbitration.

Counter-Respondent Beecham requested dismissal of the counterclaim together with an award of all damages, expenses, losses, attorneys' fees and costs incurred in the defense of this matter.

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 originals remain on file with NASD Regulation, Inc.

Respondent Schwab did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code"), and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Prior to the commencement of the evidentiary hearing, Beecham, in her individual capacity, brought an action in Florida State Court seeking a stay of arbitration as to Schwab's "crossclaim" whereby the State Court enjoined the arbitration of any claims against Beecham in her individual capacity. Thereafter, during the evidentiary hearing, Schwab moved to amend its answer to include a counterclaim against Beecham in her capacity as personal representative of the Seaber Estate and Beecham moved to dismiss the counterclaim. The Panel granted Schwab's motion to amend its answer and denied Beecham's motion to dismiss the counterclaim.

At the conclusion of Claimants' case during the evidentiary hearing, Respondent Schwab moved to dismiss the Statement of Claim, which motion was opposed by Claimants. The Panel denied the motion.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' Statement of Claim is dismissed in its entirety.
2. Respondent Schwab's counterclaim is dismissed in its entirety.
3. All other claims for relief, including Claimants' request for punitive damages and the parties' requests for costs and attorneys' fees, are denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$24,200.00 (23 sessions x \$1,000.00 per session, plus 4 pre-hearing conferences with the Chairperson x \$300.00) as follows:

1. Claimants are hereby assessed the sum of \$12,100.00 for which NASD Regulation, Inc. shall retain the \$1,000.00 hearing session deposit previously paid by Claimants in partial satisfaction thereof.

leaving a balance due in the amount of \$11,100.00.

2. Respondent Schwab is hereby assessed the sum of \$12,100.00 for which NASD Regulation, Inc. shall retain the \$1,000.00 hearing session deposit previously paid by Schwab in partial satisfaction thereof, leaving a balance due in the amount of \$11,100.00.

3. NASD Regulation, Inc. shall retain the \$250.00 claim filing fee previously paid by Claimants, as well as the \$500.00 member surcharge and the \$500.00 crossclaim filing fee previously paid by Respondent Schwab.

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

Concurring Arbitrators' Signatures
Name

Public/Industry

_____/s/_____
Robert J. Hyman, Esq.
Chairperson

Public

_____/s/_____
Joseph L. Bernstein, Esq.

Public

_____/s/_____
R. Peter Olin

Industry

Date of Decision: May 12, 1998