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**AWARD**

**NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION**

In the matter of the Arbitration Between

**Name of Claimant(s)**

Arthur J. Benvenuto, As Trustee for the  
UTA Charles Schwab & Co., Inc. IRA Rollover  
Dated 4/10/96

v.

Arbitration No.  
96-03370

**Name of Respondent(s)**

Charles Schwab & Co., Inc.

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**REPRESENTATION**

For Claimant: Patrick N. Keegan, Esq.  
Krause & Kalfayan  
San Diego, California

For Respondent: Rhonde Y. Jones, Esq.  
Charles Schwab & Co., Inc.  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed August 6, 1996

Claimant's Submission Agreement signed August 22, 1996

Statement of Answer filed December 12, 1996

Respondent's Submission Agreement signed January 13, 1997

### **HEARING INFORMATION**

The evidentiary hearing was held in San Diego, California, as follows:

December 11, 1997 - 2 sessions  
December 12, 1997 - 1 session

### **CASE SUMMARY**

Claimant alleged Respondent failed to execute a purchase for mutual fund securities as instructed. Claimant further alleged Respondent purchased its own money market securities, and failed to make the instructed trade until 7 days later, causing damage to Claimant. Claimant alleged Respondent's actions constituted negligence, breach of contract and breach of fiduciary duty.

Respondent denied the allegations of the Claim, and stated that the purchase order for the mutual fund was executed at the time Claimant placed it. Respondent further denied its representative had promised Claimant to monitor his account for receipt of funds transferred to pay for the mutual fund purchase, and that the funds were automatically placed in the money market fund upon receipt.

### **RELIEF REQUESTED**

Claimant requested compensatory damages of \$16,479.32, plus costs of arbitration and attorney's fees.

Respondent requested dismissal of all claims.

### **OTHER ISSUES**

The parties have agreed to receive conformed, counterpart copies of the Award while the originals remain on file with NASDR, Inc.

### **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 \$17,236.00 inclusive of interest in satisfaction of all claims.

2. The parties shall each bear their respective costs of arbitration, including attorney's fees.

**FORUM FEES**

Pursuant to Section 10332 of the Code of Arbitration Procedure the NASDR shall retain Claimant's \$100 non-refundable filing fee, but shall refund the \$700 hearing session deposit.

Respondent is assessed forum fees of \$1,200 (3 sessions @ \$400/session), payable to NASDR, Inc.

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William R. Newsome, Esq.

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William L. Merkin, Esq.

Alfred E. Monahan  
Alfred E. Monahan

Date Served: January 15, 1998


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