

970507

## **AWARD**

NASD Regulation, Inc. Office of Dispute Resolution

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In the Matter of the Arbitration Between

Name of Claimant

Donald L. Bolich, Sallie S. Bolich and Steven J. Bolich

and

96-04229

Name of Respondent

Charles Schwab & Company, Inc.

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## **REPRESENTATION OF PARTIES**

Donald L. Bolich, Sallie S. Bolich and Steven J. Bolich ("Claimants") were represented by Douglas W. Poling, Esq., Broomfield, Colorado.

Charles Schwab & Company, Inc. ("Respondent") was represented by Eric L. Hilty, Esq., Holland & Hart, L.L.P., Denver, Colorado.

## **CASE INFORMATION**

The Statement of Claim was filed on or about September 23, 1996. Submission Agreement of Claimant Donald L. Bolich, Sallie S. Bolich and Steven J. Bolich was signed on September 18, 1996.

Statement of Answer was filed by Respondent Charles Schwab & Company, Inc. on or about November 29, 1996. Submission Agreement of Respondent Charles Schwab & Company, Inc. was signed on December 23, 1996 by Linda Drucker.

## **HEARING INFORMATION**

The hearing was held on Thursday, May 15, 1997 in Denver, Colorado for a total of three (3) sessions.

## **CASE SUMMARY**

Claimant alleged that he relied on information provided to him by representatives of Respondent and executed short against the box transactions in Cisco Systems and Cascade Communications.

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Respondent denied the allegations of wrongdoing set forth in the Statement of Claim. Respondent specifically stated that Steven Bolich is an extremely sophisticated trader. Respondent further stated that Claimants have not been harmed in any way due to its actions. It was also stated that Claimants had received the correct information regarding requirements for the short against the box strategy and was given incorrect information about the margin requirements and how Respondent would pair the positions. Respondent stated that the incorrect information was corrected the next day and that Claimant could have maintained the original box position and written puts, thereby implementing the original strategy he intended and collect the put premiums. Claimant chose not to establish that position because of the margin requirements which Respondent did not prevent him from taking.

#### **RELIEF REQUESTED**

Claimant requested that the short sale against the box transactions for Cisco Systems and Cascade Communications be reversed thereby restoring 2,000 shares of Cisco Systems common stock and restoring 1,500 shares of Cascade Communications common stock. In addition, Claimant requested an award of costs, fees, including attorneys' fees and punitive damages in the amount of \$25,000.

Respondent requested that the claims asserted in this matter 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 the 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. The claims asserted in this matter shall be and hereby are denied in their entirety.
2. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein, including attorneys' fees.

#### **FORUM FEES**

Forum fees are calculated at the rate of \$750 per hearing session and \$300 for each pre-hearing conference, if any. There were three (3) sessions x \$750 = \$2,250 in forum fees. Pursuant to Rule

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 Rule 10332(c) of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee in the amount of \$200 and shall retain as forum fees the hearing session deposit in the amount of \$750 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimants Donald L. Bolich, Sallie S. Bolich and Steven J. Bolich. Claimants Donald L. Bolich, Sallie S. Bolich and Steven J. Bolich shall be and hereby are liable for and shall pay to the NASD Regulation Inc. Office of Dispute Resolution the sum of \$1,500 as the balance due for forum fees.

Pursuant to Rule 10333 of the NASD Code of Arbitration Procedure, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable member surcharge in the amount of \$350. Fees are payable to the NASD Regulation, Inc. Office of Dispute Resolution.

/s/ Thaddeus J. Tecza, Ph.D  
Thaddeus J. Tecza, Ph.D  
Public Arbitrator, Presiding Chair

Dated: May 27, 1997

/s/ Dom Alecci, Esq.  
Dom Alecci, Esq.  
Public Arbitrator

May 28, 1997

/s/ Gerald K. Moore  
Gerald K. Moore  
Industry Arbitrator

May 28, 1997