

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimant

Phyllis F. Jones

96-04392

Name of Respondent

Charles Schwab & Company, Inc.

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CASE SUMMARY

In a case filed with the National Association of Securities Dealers Regulation, Inc. on October 2, 1996, claimant Phyllis Jones ("claimant") who appeared Pro Se, alleged that respondent Charles Schwab & Company, Inc. ("Schwab") misled her by using deceptive advertising. Claimant further alleged that on July 26, 1996, she decided to buy Magal Security Stocks ("MAGSF"). Claimant also alleged that she decided to use a Telebroker and consulted Schwab's book on "Guide to Using Telebroker." Claimant asserted that she carefully followed the instructions and was informed by Telebroker that she bought 1,400 shares of MAGSF at 11 1/8. Claimant further asserted that on July 29, 1996, she tried to put a stop/limit order on the stocks since they were at 15 1/4. Claimant also asserted that she spoke to a person who told her that she bought the stock at 15 1/4 and not at 11 1/8 because she bought the stock "after hours" on July 26, 1996. Claimant contended that this was all contrary to what she was told by Telebroker. Claimant further contended that the Telebroker emphatically stated that she bought 1,400 shares at 11 1/8.

Claimant also contended that nothing on page 9 of the book discusses after hours buying. Claimant alleged that the very reason she bought the stock on Friday was to take advantage of any possible after hours trading and market upswings. Claimant further alleged that there is no information on page 9 describing "placing orders" which is the format she used. Claimant also alleged that the only confirming information she received is that she bought 1,400 shares at 11 1/8. Claimant asserted that after hearing from Schwab that she bought the stock at 15 1/4 she put a stop/limit on them of 12 1/2 in a panic to prevent an even greater loss.

Respondent Schwab through its representative and in-house counsel Gregory Scanlon, maintained that claimant placed an unsolicited order to purchase 1,400 shares of MAGSF, on July 26, 1996 at 4:34 p.m. (EST), 34 minutes after the market closed. Respondent further maintained that day orders placed after market hours are subject to execution at the next business day the market opens. Respondent also maintained that the Telebroker system allows customers to place trades in their account 24 hours a day, 7 days a week. Respondent contended that it cannot execute customer orders when the trading market is closed and disagrees that the guide is misleading or deceptive. Respondent further contended that Telebroker cannot confirm an order as executed until that order is executed. Respondent also contended that Telebroker did not confirm claimant's order as executed on July 26, 1996. Respondent maintained that Telebroker read back the order as entered by claimant, including the number of shares and the

approximate price of the order based on the last quote. Respondent further maintained that they properly executed the MAGSF purchase order. Respondent also maintained that claimant failed to mitigate her losses once she knew that the order had been executed at 14 7/8.

### **RELIEF REQUESTED**

Claimant Phyllis Jones requested (1) \$3,475.00 for losses due to price change; (2) \$4,025.00 for losses due to non-execution of the order she placed.

Respondent Schwab requested that the claims of claimant be dismissed in their entirety.

### **AWARD**

Pursuant to Rule 10302 of the NASD Code of Arbitration Procedure, a single Public Arbitrator, Simon J. Trager, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by claimant Phyllis Jones on October 11, 1996 and by respondent Schwab on October 28, 1996.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Charles Schwab & Company, Inc. be and hereby is liable and shall pay claimant Phyllis Jones the sum of \$2,625.00.
2. All other relief requests are denied.
3. The \$150.00 filing fee previously deposited with National Association of Securities Dealers Regulation, Inc. by claimant Phyllis Jones shall be retained by NASD Regulation, Inc. Respondent Charles Schwab & Company, Inc. be and hereby is liable and shall pay claimant Phyllis Jones the sum of \$75.00 as reimbursement for one-half of the filing fee.

### **EXPLANATION OF ARBITRATOR'S AWARD**

Based upon the evidence previously submitted plus the testimony given at the subsequent hearing by conference call on January 17, 1996 the arbitrator states the following:

Regarding the performance of Telebroker: It worked just as it was designed to. Telebroker promised to accept orders 24 hours a day, 7 days a week. It did. It did not promise to execute day orders after the market closed. It did not.

Claimant's request to recover losses, consisting of two claims:

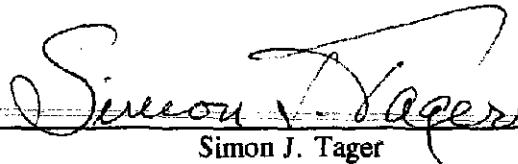
(a) Loss due to price change...\$3,475.00. Claimant's testimony indicated that the loss was based upon comparing the price shown on the buy confirm with the price received on the sell confirm. This price change was due to market fluctuation. Therefore, this claim is denied.

(b) Loss due to non-execution of the order as placed...\$4,025.00. Claimant (conference call) explained that the original order was at \$11 1/8 a total cost of \$15,691.06. The actual purchase cost was \$20,956.23. The difference came to \$5,265, which she wanted to recover. Defendant indicated that at the time the order was placed the claimant was not advised that the order could not be executed on that day or at that price. In addition, according to the defendant's testimony, Schwab never informed claimant how after-hour-orders were to be treated. A broker has a responsibility of keeping investors informed regarding how their orders will be treated.

Claimant admitted that she knew the market was closed when she placed that day order. However she did not attempt to see if the order would be executed that day. A prudent and sensible course of action would have been to ask if there would be a problem with the late order. Claimant took no such action. It is the arbitrator's belief that both parties were remiss and that is why claimant is awarded half of claimant's second claim.

**AFFIRMATION**

I, **Simon J. Tager**, do hereby affirm upon my oath as arbitrator that I am the individual described herein who executed this instrument which is my oath and award.

  
Simon J. Tager

Date of Decision: March 21, 1997