

-AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

James S. Sanger and Sarah S. Sanger,

Claimants,

and

No. 96-04846

Charles Schwab & Co., Inc.,

Respondent.

REPRESENTATION OF PARTIES

Claimants, James S. Sanger and Sarah S. Sanger, were represented by James R. Eagleton, Esquire of Eagleton, Eagleton & Harrison, Incorporated, located in Tulsa, Oklahoma.

Respondent, Charles Schwab & Company, Incorporated, was represented by Rhonda Jones, Esquire of Charles Schwab & Company, Incorporated, located in San Francisco, California.

CASE INFORMATION

James S. Sanger and Sarah S. Sanger's Statement of Claim was filed on or about October 31, 1996.

James S. Sanger and Sarah S. Sanger's Submission Agreement was signed on October 28, 1996.

Charles Schwab & Company, Incorporated's Statement of Answer was filed on or about January 4, 1997.

Charles Schwab & Company, Incorporated's Submission Agreement was signed on January 13, 1997 by Linda Drucker, Senior Corporate Counsel of Charles Schwab & Company, Incorporated.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on July 15, 1997 for one (1) session.

The hearing was held in Oklahoma City, Oklahoma.

CASE SUMMARY

Claimants, James S. Sanger and Sarah S. Sanger ("Claimants"), brought this action against Respondent, Charles Schwab & Company, Incorporated ("Respondent") for its alleged failure to carry out a buy order. Claimants stated that on February 15, 1996, they purchased from and through Respondent three thousand shares of Seven Seas Petroleum at a unit price of \$1.80. According to Claimants, they asked the amount due, plus commission, and were advised that the amount due was \$5,570.00, which they forthwith paid by check plus deposit of \$1,000.00 being held in the account. Claimants asserted that after the market closed on February 15, 1996, a broker from Respondent called and advised that they were unable to buy the stock.

Respondent denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on its part. Respondent stated that: (1) prior to the market opening on February 15, 1996, Mr. James S. Sanger requested a limit order to purchase 3,000 shares of Seven Seas Petroleum; (2) Respondent's representative confirmed and then entered the order; (3) Claimants' order was not executed because the price of the securities never reached the limit price of \$1.80; and (4) Claimants failed to properly mitigate their damages.

RELIEF REQUESTED

Claimants, James S. Sanger and Sarah S. Sanger, requested an award for damages in the amount of \$17,600 together with attorney fees and costs of these proceedings and, in the alternative, if the stock goes up to a higher price than \$7.75 (as of April 18, 1996), then damages should also be raised accordingly.

Respondent, Charles Schwab & Company, Incorporated, requested that the claims asserted against it be dismissed in their entirety.

OTHER ISSUES CONSIDERED AND 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. Charles Schwab & Company, Incorporated is liable for and shall pay James S. Sanger and Sarah S. Sanger compensatory damages in the amount of \$3,336.00.
2. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here are, and each of them, hereby denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$400 per hearing session and \$300 for each pre-hearing conference, if any. There were no pre-hearing conferences and there was one (1) hearing session x \$400 = \$400 in forum fees. Pursuant to § 10332(b) of the NASD Code of Arbitration Procedure (the "Code") 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 § 10332(c) of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable filing fee in the amount of \$100 and shall **retain** as forum fees the hearing session deposit in the amount of \$400 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by James S. Sanger and Sarah S. Sanger.

Pursuant to § 10333 of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall **retain** the non-refundable member surcharge in the amount of \$200 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Charles Schwab & Company, Incorporated.

Charles Schwab & Company, Incorporated is liable for and shall pay to James S. Sanger and Sarah S. Sanger the amount of \$400 as reimbursement for their hearing session deposit.

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

Concurring Arbitrators' Signatures

Leroy Patton, Esquire
Leroy Patton, Esquire
Chairperson
Public Arbitrator

July 31, 1997
Dated:

Robert N. Naifeh, Esquire
Robert N. Naifeh, Esquire
Panelist
Public Arbitrator

July 31, 1997
Dated:

Ira W. Painton
Ira W. Painton
Panelist
Industry Arbitrator

August 4, 1997
Dated:

For NASD use only:

Date Award was served on the parties: _____