

12/19/97

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AWARD

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

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In the Matter of the Arbitration Between

Name of Claimant

Bruce W. Bublick Ltd Retirement Trust

96-04996

Name of Respondent

Charles Schwab & Company, Inc.

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REPRESENTATION

For Claimant: The Bruce W. Bublick Ltd. Retirement Trust ("Bublick") was represented by J. William Holland, Esq. of Holland & Holland, located in Chicago, Illinois and Kathleen H. Gorr, Esq. Of Glen Ellyn, Illinois. The Bruce W. Bublick Ltd. Retirement Trust  
William H. Gorr, Esq. Of

For Respondent: Charles Schwab & Company, Inc. ("Schwab") was represented by Charles Gilbert R. Serota, Esq. of Howard, Rice, Nemerovski, Canady, Falk & Rabkin, and Steven Lannum, Esq. Of Charles Schwab & Co., Inc., both located in San Francisco, California. Charles Gilbert R. Serota, Esq. of  
Steven Lannum, Esq. Of

CASE INFORMATION

Statement of Claim filed: November 8, 1996.

Claimant's Submission Agreement signed on: December 10, 1996 by Arlene Bublick as Trustee of the Bruce W. Bublick Ltd. Retirement Trust and December 30, 1996 by Bruce Bublick, as Trustee of the Bruce W. Bublick Ltd. Retirement Trust.

Statement of Answer and Motion to Dismiss filed by Respondent on: February 28, 1997.

Respondent's Submission Agreement signed on: February 24, 1997 by Linda Drucker, Senior Corporate Counsel, Charles Schwab & Company, Inc.

Response to Statement of Answer and Motion to Dismiss filed on: March 28, 1997.

### **HEARING INFORMATION**

Pre-Hearing Conference: August 18, 1997 for One (1) session (single arbitrator).  
Hearing Dates/Sessions: October 6, 1997 for Two (2) sessions;  
October 7, 1997 for Three (3) sessions; and  
October 8, 1997 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

### **CASE SUMMARY**

Claimant alleged that Schwab engaged in unsuitable trades and excessive trading. The claim specifically alleged that:

1. Bublick maintained an account at Schwab between 1990 and 1995 which was actively traded from 1993 until June 1995, executing over 2,900 trades during the time period in question;
2. Schwab accepted orders from Mr. Bublick who they knew or should have known had a compulsive gambling disorder. Schwab recognized this behavior because it sent Bublick a trading activity letter in June 1994 indicating the number of trades and losses; and
3. Schwab should have known that the trades were unsuitable and excessive for a retirement account, the Bublick's objectives, age, lack of sophistication, net worth and annual income.

Based upon the above allegations, Bublick asserted claims for breach of contract; common law negligence; violation of Rule 10b-5 promulgated pursuant to Section 10(b) of the Securities and Exchange Act of 1934; violation of Section 20 of the Securities Exchange Act of 1934; and breach of fiduciary duty.

Respondent denied the material allegations of the Statement of Claim, alleging that the Bublicks were sophisticated investors who were provided special notice of the risks presented by their trading practices and who assured Schwab that all trading was in accord with their goals and strategies. In addition, not a single trade was solicited by Schwab or based upon any recommendation rendered by Schwab or its agents. In addition, Schwab asserted several affirmative defenses.

The Bublicks' responded that they were not sophisticated investors and Schwab had a legal obligation to act on the information that Mr. Bublick's trading was out-of-control.

**RELIEF REQUESTED**

Claimant requested entry of an award against the Respondent for actual damages of \$391,705.00; recoupment of commissions; recoupment of the margin interest; reasonable attorneys' fees and any other relief that the panel deemed appropriate.

Respondent requested that the claims be dismissed and that it be awarded its costs and fees.

**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 the NASD.

**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 statement of claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is herein denied.

**OTHER COSTS**

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$350.00 member surcharge paid pursuant to Section 10333 of the Code of Arbitration Procedure.

**FORUM FEES**

Pursuant to Section 10332© of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing x \$300.00 = \$300.00; Seven (7) hearing sessions x \$750.00 per session = \$5,250.00; Total Forum Fees = \$5,550.00.

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NASD Regulation Inc., Office of Dispute Resolution  
Arbitration No. 96-04998  
Award Page 4 of 4

The NASD Regulation, Inc., Office of Dispute Resolution shall retain the \$200.00 non-refundable claim filing fee and, as forum fees, the \$750.00 hearing session deposit previously paid by the Claimant, the Bruce W. Bublick Ltd. Retirement Trust. In addition, Claimant The Bruce W. Bublick Ltd. Retirement Trust is liable for and shall pay to the NASD Regulation, Inc., Office of Dispute Resolution the sum of \$4,800.00 as forum fees.

Concurring Arbitrators' Signatures  
Name

Date

/s/ Kevin J. Conway, Esq.  
Kevin J. Conway, Esq.  
Public Arbitrator  
Chairperson

December 5, 1997

/s/ Steven A. Bloomberg, Esq.  
Steven A. Bloomberg, Esq.  
Public Arbitrator

December 4, 1997

/s/ Michael Steinberg, Esq.  
Michael Steinberg, Esq.  
Industry Arbitrator

December 5, 1997  
Michael Steinberg, Esq.  
Industry Arbitrator

For ODR Use Only/Date of Decision: December 15, 1997

For ODR Use Only/Date

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

James A. Fisher; Edith H. Fisher; James A. Fisher, Kipling Corporation; Chester G. Fisher, II; Dorothy Jean Aldworth; Sonja D. Baker; Prina V. Biguereau; Martin Birn; Diane Brian; John A. Buehler; Lloyd F. Conner *fbo* Harold R. Conner; Joseph Conrad; Jeremiah ("Toby") Crowley; Melissa Crowley; Kenny Danielson; Barbara Danielson; Tioga, Inc., Hans Christian Hogne Bernhoft, President *fbo* Kim Dunn; Lois P. Ellis; Katherine H. Everson; Mary E. Fuller; Richard Gaines; Rebecca Gonzales; Wallace R. Green; Thelma R. Green; James Gross; Theodore G. Harris; Mary Lou Harris; Sharron Harwood; Lois M. Healy; Riley Hunter; Nancy H. Johnson; Carlton Jones; Shirley Jones; Eugene Jordan; LAD Financial Services, Inc., *on behalf of* Grey Ghost, *c/o* Larry Turpin; Phyllis LaFont; Wolfgang Loeschner; Donald McKenzie; Elizabeth Anne McKenzie; Richard Meyers; Agnes Meyers; James H. Mitchell; Carren S. Oler; Ann Pereos *a.k.a.* Ann Fry; Leonard Sample; Janet Sample; Curtis Schmidt; Nathan C. Smith; Barbara K. Spavin; Philip M. Speilman; Petiflor Speilman; Nancy F. Stacy; Richard Stein; Carolyn Stein; John Thyden; John Wenburg; Carolyn Wenburg and Thomas R. Yates, (Claimants)

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v.

Bear, Stearns & Co.; Bear, Stearns Securities Corp.; Stephen Ackerman; Barry Ganz; Mark Seruya and Stuart Weisbrot, (Respondents).

Case Number: 96-04997

Hearing Site: Los Angeles, California  
(October 20, 1998 through August 13, 1999)  
and Carson City, Nevada (July 14, 1998  
through September 10, 1998)

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**REPRESENTATION OF PARTIES**

Claimants, James A. Fisher; Edith H. Fisher; James A. Fisher, Kipling Corporation; Chester G. Fisher, II; Sonja D. Baker; Prina V. Biguereau; Martin Birn; Diane Brian; John A. Buehler; Lloyd F. Conner; Joseph Conrad; Jeremiah ("Toby") Crowley; Melissa Crowley; Kenny Danielson; Barbara Danielson; Lois P. Ellis; Katherine H. Everson; Mary E. Fuller; Richard Gaines; Rebecca Gonzales; Wallace R. Green; Thelma R. Green; James Gross; Theodore G. Harris; Mary Lou Harris; Lois M. Healy; Riley Hunter; Carlton Jones; Shirley Jones; Eugene Jordan; Wolfgang Loeschner; Donald McKenzie; Elizabeth Anne McKenzie; Richard Meyers; Agnes Meyers; James H. Mitchell; Carren S. Oler; Ann Pereos *a.k.a.* Ann Fry; Curtis Schmidt; Barbara K. Spavin; Philip M. Speilman; Petiflor Speilman; Nancy F. Stacy; John Thyden; John Wenburg and Carolyn Wenburg, hereinafter collectively referred to as "Claimants"; Jeff Dennis Ferentz, Esq., Greenbaum & Ferentz, L.L.P., Newport Beach, California and Ron Miller, Miller Research Co., Incline Village, Nevada.