

12/19/97 44126-1

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

**David E. Faram and
Gayle E. Faram,
Jt. Ten.**

Claimants,

and

Case No. 96-05031

Charles Schwab & Co., Inc.

Respondent.

REPRESENTATION OF PARTIES

Claimants, David E. Faram and Gayle E. Faram were represented by: Ray L. Cox, Esquire located in Houston, Texas.

Respondent, Charles Schwab & Co. was represented by: Eric Toher, Esquire of Porter & Hedges, LLP located in Houston, Texas.

CASE INFORMATION

Claimants, David E. Faram and Gayle E. Faram's Statement of Claim was filed on: November 11, 1996.

Claimants, David E. Faram and Gayle E. Faram's Submission Agreement was signed on: October 12, 1996.

Respondent, Charles Schwab & Co.'s Statement of Answer was filed on: February 4, 1997.

Respondent, Charles Schwab & Co.'s Submission Agreement was signed by Linda Drucker, Senior Corporate Counsel on: December 23, 1996.

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HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on: October 15, 1997 for a total of two (2) sessions.

The hearing was held in: Houston, Texas.

CASE SUMMARY

Claimants, David and Gayle Faram's brought this action against Respondent, Charles Schwab & Co. ("Schwab") alleging: negligence, gross negligence, breach of agency relationship, breach of fiduciary relationship, violation of Texas Property Code, and for unauthorized transfer of account to the state. Specifically, Claimants' alleged that Schwab was negligent with respect to their account because Schwab had a duty not to make unauthorized trades with respect to the account, and that the duty still existed in the face of the risk-utility test. That is, Claimants' asserted that Schwab breached these duties by transferring, without authorization, Claimants' account to the State of Texas inconsistent with the presumption allowed under Texas Property Code § 72.101.

As a result, Claimants' asserted that they were injured, in that, they were no longer able to realize this continuing appreciation of their original investment, and that they lost the right to sell their stock at the point when they chose.

Furthermore, Claimants alleged that Schwab was guilty of gross negligence in that when Claimants became aware of what had happened to their stocks, they notified Schwab asking for their account to be reinstated, and that their request was met with no help or assistance from Schwab. In short, Claimants alleged that Schwab had actual conscious indifference to the rights, safety, and welfare of the Claimants.

Claimants asserted that Schwab was also guilty of breach of an agency relationship, in that, Schwab acted contrary to the intentions of the Claimants as principal in handling their account. Claimants alleged that Schwab breached his fiduciary relationship as well, by the unauthorized transfer of Claimants' account to the State inconsistent with the presumption permitted under Texas Property Code § 72.101.

Respondent, Charles Schwab & Co., ("Schwab") denied the allegations set forth in the Statement of Claim as they related to any wrongdoing on its part. Specifically, Schwab contended that: all of the Claimants' theories fail since Schwab never made a "trade" regarding Claimants' account. Rather, as Claimants admit, Schwab simply reported their shares to the State of Texas as unclaimed

property, as was Schwab's legal obligation. Schwab also asserted that in the Statement of Claim, Claimants provide no authority for the proposition that reporting stock as unclaimed property constitutes a "trade."

Respondent also set forth the following affirmative defenses: statutory immunity; contributory negligence and comparative fault; that Claimants failed to mitigate their damages; and statute of limitations.

RELIEF REQUESTED

In the pleadings, Claimants, David E. And Gayle E. Faram requested an award for: a judgement against Schwab in the sum of \$35,969.63 in compensatory damages together with damages to offset all federal taxes incurred due to taxable damages; \$100,000.00 in punitive damages; reasonable attorney's fees of \$25,000.00; prejudgment and post-judgment interest; costs and disbursements, together with such other and further relief as the panel may deem just in the law and equity.

Respondent, Charles Schwab & Co. 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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Charles Schwab & Co., Inc. is liable for and shall pay to Claimants, David E. And Gayle E. Faram compensatory damages in the amount of \$48,550.00.
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 in their entirety and dismissed with prejudice.

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FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session and \$300 for each pre-hearing conference, if any. There were two (2) hearing sessions x \$750.00 = \$1500.00 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© of the Code, the NASD Regulation, Inc. Office of Dispute Resolution shall retain the non-refundable filing fee of \$200.00 and shall retain as forum fees the hearing session deposit of \$750.00 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by the Claimants.

Pursuant to § 10332© of the Code, Respondent, Charles Schwab & Co., Inc. is liable for and shall pay to the NASD Regulation, Inc. Office of Dispute Resolution the sum of \$750.00 in forum fees.

Pursuant to § 10333 of the Code, the NASD regulation Inc. Office of Dispute Resolution shall retain the \$350.00 member surcharge previously paid by Respondent, Charles Schwab & Co., Inc.

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

Concurring Arbitrators' Signatures

Sharon Jever Hemphill, Esquire
Sharon Jever Hemphill, Esquire
Chairperson
Public Arbitrator

December 29, 1997
Dated:

Walton L. Huff
Walton L. Huff
Panelist
Public Arbitrator

December 23, 1997

Thomas A. Thornhill, Jr.
Thomas A. Thornhill, Jr.
Panelist
Industry Arbitrator

December 23, 1997
Dated:

For NASD use only:
Date Award was served on the parties: December 30, 1997