

970902

AWARD

NASD Regulation, Inc. Office of Dispute Resolution

In the Matter of Arbitration Between

Janet Gordon,

Claimant,

and

No. 96-05105

Charles Schwab & Co., Inc.,

Respondent.

REPRESENTATION OF PARTIES

Claimant, Janet Gordon ("Gordon"), was represented by Everett B. Gibson, Esquire, located in Memphis, Tennessee.

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

CASE INFORMATION

Gordon's Statement of Claim was filed on or about November 14, 1996.

Gordon's Submission Agreement was signed on November 14, 1996.

Schwab's Statement of Answer was filed on or about January 28, 1996.

Schwab did not submit a properly executed submission agreement.

HEARING INFORMATION

No pre-hearing conferences were held.

The hearing was held on August 20, 1997 for one (1) session in Memphis, Tennessee.

CASE SUMMARY

Gordon brought this action against Schwab alleging that it is liable for allowing her then husband to withdrawal cash from her account with Schwab. Gordon asserted that Schwab implicitly represented to her that it would manage her funds in accordance with the standards of the industry including the obligation to protect her funds from misappropriation by any other persons. Gordon further asserted that Schwab owed her a fiduciary duty to protect her funds in accordance with the standards of the industry. According to Gordon, although she granted her then husband authority to instruct employees of Schwab how the funds she owned should be invested in various securities, she did not give to her former husband any further authority, and she specifically did not give to her former husband authority to withdraw funds from her account with Schwab. Gordon asserted that her signature appearing on Schwab accounts were forgeries. Gordon asserted that on November 16, 1990 and again on December 16, 1990, her then husband was permitted by Schwab to withdraw \$5,000.00 in cash, and \$10,000.00 in cash, respectively, from her account without her knowledge or authorization. Gordon alleged that Schwab is liable for breach of contract for its failure to manage her funds in accordance with its implicit representations and is also liable for breach of fiduciary duty. Gordon claimed that she has been damaged by Schwab in the amount of \$15,000.00, plus pre-arbitration award interest from November and December 1990, to the date of the award.

Schwab denied the allegations set forth in the Statement of Claim as they relate to any wrongdoing on its part. Schwab stated that Gordon appointed her then husband as a financial advisor in her account pursuant to a Schwab Brokerage Account Limited Trading Authorization. Schwab did not refute that Gordon's signature on its account statements were forgeries. According to Schwab, the documents also show that Schwab sent copies of the monthly account statements to Gordon beginning in June 1989 when the account was opened, through and including November and December 1990 when the withdrawals in question were made. Schwab noted that despite receiving notice of the account activity, it was not until November 1996, almost six years after her ex-husband had allegedly withdrawn the funds, that Gordon filed a claim or otherwise notified Schwab that there was an issue concerning her account. Schwab further asserted that: (1) Schwab acted properly at all times; (2) Gordon's own negligence led to her alleged loss; (3) Gordon's claims are barred in the grounds of laches; (4) Gordon's claims are barred by the statute of limitation; and (5) Gordon has named the wrong party in this action.

RELIEF REQUESTED

Gordon requested an award for damages of \$15,000 together with pre-award interest and the costs of this proceeding.

Schwab requested that the claims asserted against it be denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

Charles Schwab & Company, Incorporated did not file with NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration, but is required to submit to arbitration pursuant to § 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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 decision and determination as follows:

1. Respondent, Charles Schwab & Co., Inc. is liable for, and shall pay to the Claimant, Janet Gordon, the sum of \$5,000 as satisfaction of her request for damages.
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, denied with prejudice.

FORUM FEES

Forum fees are calculated at the rate of \$300 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 \$300 = \$300 in forum fees. Pursuant to § 10332(b) of 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 of \$100 and shall retain as forum fees one-half (½) or \$150 of the hearing session deposit of \$300 previously deposited with the NASD Regulation, Inc. Office of Dispute Resolution by Janet Gordon. The Remaining hearing deposit of \$150 shall be refunded to the Claimant, Janet Gordon.

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

Additional forum fees in the amount of \$150 are assessed by the arbitrators against the Respondent, Charles Schwab & Co., Inc.

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

Concurring Arbitrators' Signatures

John R. Preston
John R. Preston, Esquire
Chairperson
Public Arbitrator

/s/

September 5, 1997

Dated:

F. Guthrie Castle, Jr.
F. Guthrie Castle, Jr., Esquire
Panelist
Public Arbitrator

/s/

September 19, 1997

Dated:

Hal F. Lewis
Hal F. Lewis
Panelist
Industry Arbitrator

/s/

September 8, 1997

Dated: