

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

Name of Claimant

96-05425

Charles Schwab & Company, Inc.
Janney Montgomery Scott, Inc.
Myles H. Shoop

Respondent Myles H. Shoop ("Shoop") appeared *pro se*.

Respondent Shoop did not submit an Answer or an executed agreement to arbitrate.

Hearing Dates/Sessions: November 12, 1997/two sessions
November 13, 1997/two sessions

Hearing Location: NASD Regulation District 9 Office
Philadelphia, PA

CASE SUMMARY

Claimant alleged that in November 1994 when he met Shoop, then a broker affiliated with Schwab, he had approximately \$15,000.00 in an MFS fund, a video store worth approximately \$20,000.00 and a small amount of equity in a home and car. Claimant alleged that Shoop guaranteed that if Claimant allowed Shoop to invest his money with Schwab, he would not lose any money during the first year of his investing and would probably make significantly more than he was getting from his MFS fund. Claimant further alleged that Shoop assured him that Shoop would only be paid on the basis of a percentage of Claimant's "profits". Claimant asserted that he was a very unsophisticated investor as he had only invested funds in the MFS fund and in a Franklin Money Market Fund. Claimant alleged that Shoop had incorrect information on the new account form, the financial profile and then had Claimant sign an Option, Margin & Short Account trading application, despite the fact that Claimant had no idea of what he was signing. Claimant alleged that even though he only invested \$10,000.00 with Shoop, Shoop proceeded to have \$124,657.45 of sale proceeds activities less commissions in 1995 and Claimant was required to come up with additional money to the extent that he had invested \$19,200.00 and had a net equity of \$7,000.00 as of February 1996.

Claimant alleged that on January 26, 1996 Schwab finally informed Claimant they were removing Options from Claimant's account. However, Claimant alleged that Shoop was not daunted but, in fact, just went to JMS, and continued the same unsuitable churning option activity with Claimant's account. Claimant alleged that finally JMS noticed the excessive activity in highly speculative securities in Claimant's account and sent Claimant a letter in July 1996 requesting that Claimant confirm that he was fully aware of the nature of the investments. Claimant asserted that he eventually lost a total of \$24,000.00 due to Shoop's excessive trading in unsuitable securities. Claimant further alleged that Schwab and JMS were negligent in their supervision of Shoop's management of Claimant's account.

In response to Schwab's Counterclaim, Claimant asserted that Shoop was an agent of or in some way related to Schwab, and that Schwab managers were not only aware of that relationship but ratified Shoop's actions.

Respondent Schwab denied all allegations of liability in the Statement of Claim. Schwab maintained that Shoop was an independent financial advisor who was not an employee or agent of Schwab. Schwab maintained that Claimant selected Shoop as his investment advisor and voluntarily granted Shoop discretionary trading authority over Claimant's accounts. Schwab maintained that they had no discretionary trading authority over Claimant's account and did not make any investment recommendations. Furthermore, Schwab maintained that both Claimant and Shoop expressly agreed to indemnify Schwab from all liabilities, costs or expenses resulting from Shoop's exercise of trading authority over Claimant's account.

Respondent Schwab alleged, in the Counterclaim against Claimant and the Cross-Complaint against Shoop for indemnification that Claimant and Shoop each signed the Schwab Brokerage Account Limited Power of Attorney on September 15, 1995 which agreed to hold Schwab harmless for any dispute between Shoop and Claimant.

Respondent JMS denied all allegations of wrong-doing as asserted against JMS in the Statement of Claim. JMS maintained that Claimant closed his account with Schwab and opened one with JMS. JMS further maintained that at the time Claimant transferred his account to JMS he had a debit of approximately \$32,500.00 and equity of approximately \$7,500.00. JMS further maintained that in signing the new account form Claimant also personally filled out and executed a Customer Account Agreement for Equity and Index Options Trading form in order to effect transactions in listed option contracts. JMS contended that Claimant indicated that his number one investment objective was speculation and stated that he understood the nature of trading options and the risks associated therewith. JMS maintained that although approximately half of the transactions Claimant authorized were profitable individually, as a whole the transactions resulted in a loss of all equity deposited by Claimant and even created a debit balance. JMS maintained that JMS acted at all times regarding the handling of Claimant's account in a manner consistent with its obligation to observe the rules of just and equitable principles of trade and properly supervised all associated personnel. Furthermore, JMS contended that Claimant's claims are barred by the doctrines of comparative negligence, estoppel, ratification, waiver, laches and/or unclean hands.

Respondent Shoop did not file any written response.

RELIEF REQUESTED

Claimant requested \$24,000.00 plus pre-award interest; punitive damages of \$100,000.00 and the costs of this arbitration.

Respondent Schwab requested that the Statement of Claim be dismissed in its entirety as to Schwab and that Claimant and Shoop indemnify Schwab for all damages, costs, expenses and attorney's fees it incurs as a result of this proceeding.

Respondent JMS requested that the Statement of Claim be denied and all costs assessed to Claimant.

Respondent Shoop did not submit a written request for relief.

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.

The panel considered Respondent Shoop's request to participate in the hearing although Respondent Shoop did not file an answer, and all Responses thereto, and permitted Respondent Shoop to appear and fully participate at the hearing. In addition, pursuant to the by-laws of the NASD, the panel determined that Respondent Shoop was required to submit to this arbitration, notwithstanding his failure to submit an executed agreement to arbitrate and that his appearance waived all objections. Therefore, Respondent Shoop is bound by the panel's rulings and determinations.

The panel considered Respondents Schwab's and JMS's Motions to Dismiss raised at the completion of Claimant's case, and Claimant's Responses thereto, but denied the Motions at that time.

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. That Respondents JMS and Shoop are jointly and severally liable to and shall pay to Claimant \$7,984.00; and
2. That the claims against Respondent Schwab are denied in their entirety; and
3. That the claim for punitive damages is denied; and
4. That Schwab's Counterclaim and Cross-Complaint are denied; and
5. That each party shall bear its own costs and expenses, including attorney's fees, with the exception of the Forum Fees as specified below; and
6. That any and all relief not specifically addressed herein is denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code, Respondents Schwab and JMS are each assessed a member surcharge of \$350.00. As both Respondents Schwab and JMS have submitted a surcharge deposit of \$350.00, there are no further member surcharge assessments due.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

4 sessions x \$750.00 = \$3,000.00.

Forum Fees are assessed at \$1,000.00 to Claimant, \$1,000.00 to Respondent Shoop and \$1,000.00 to Respondent JMS. Claimant shall receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due from Claimant of \$250.00. Respondent Shoop and Respondent JMS each have an assessment due of \$1,000.00.

Respondent Charles Schwab will have the \$1,500.00 hearing session deposits previously submitted to the NASD Regulation refunded.

Fees are payable to the National Association of Securities Dealers Regulation, Inc.

DATE

CONCURRING ARBITRATORS' SIGNATURES

12/1/97

Diane Ciccone, Esq

Diane Ciccone, Presiding
Public Arbitrator

George A. Spohrer
Public Arbitrator

David M. Panko
Industry Arbitrator

Date Decision Served by NASD Regulation:

December 12, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

11/16/97

Diane Ciccone, Presiding
Public Arbitrator

George A. Spohrer
George A. Spohrer
Public Arbitrator

David M. Panko
Industry Arbitrator

Date Decision Served by NASD Regulation: December 12, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Diane Ciccone, Presiding
Public Arbitrator

George A. Spohrer
Public Arbitrator

DECEMBER 1, 1997



David M. Panko
Industry Arbitrator

Date Decision Served by NASD Regulation:

December 12, 1997