

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Alan King

97-02752

Names of Respondents

Charles Schwab & Company, Inc.
James Singer

REPRESENTATION

For Claimant: Patrick A. Davis, Esq. of Patrick A. Davis, P.A., Clearwater, Florida.

For Respondents: Steven Lamm, Esq. of Charles Schwab & Company, Inc. ("Schwab"), San Francisco, California.

CASE INFORMATION

Statement of Claim filed: June 3, 1997.

Claimant's Submission Agreement signed on: June 2, 1997.

Joint Statement of Answer filed by Respondents on: October 29, 1997.

Submission Agreements signed by Respondents on: July 30, 1997.

HEARING INFORMATION

On February 26, 1998, the arbitration panel conducted a telephonic pre-hearing conference which lasted one (1) session.

On July 9, 1998, a majority of the arbitration panel conducted a telephonic pre-hearing conference which lasted one (1) session.

On July 15, 1998, hearings lasting two (2) sessions were conducted in Tampa, Florida.

On November 4 and 5, 1998, hearings lasting four (4) sessions were conducted in Tampa, Florida.

CASE SUMMARY

Claimant alleged the following: that Respondents violated Chapter 517 of the Florida Statutes by making misrepresentations and omissions in connection with the rendering of investment advice pursuant to the provisions of Chapter 517.301 for common law fraud, for breach of fiduciary duty and negligence. The complaint stemmed from an account that was opened in October 1994, wherein the Claimant placed 11,171 shares of Tech Data stock having a value of \$220,627.25 into the account at Schwab. The Claimant further alleged that upon the advice and encouragement of the Respondent, James Singer, as an agent of Schwab, the Claimant opened this account for the purpose of borrowing money against the Tech Data stock which the Claimant understood was restricted and could not be sold. Schwab and James Singer, in opening the account, established a margin account to enable the Claimant to make withdrawals against the value of his Tech Data stock. In opening the margin account, the Respondents failed to disclose that the Tech Data stock was, in fact, not restricted and could be sold if the Claimant chose, and further failed to discuss or disclose the inherent risks in utilizing margin borrowing, opening a margin account including the risk that the account could be subject to margin calls and that, if a margin call occurred, the Claimant would have to deposit additional monies or liquidate a portion of the stock in order to hold the position. Ultimately, a margin call forced a liquidation of the entire 11,171 shares.

Respondents denied the substantive allegations of the claim and asserted the following: that the only objective Claimant ever communicated was his immediate need for cash with which to start a business. The Claimant, in fact, borrowed over \$100,000.00 from Schwab, securing the loans with stock he deposited in his account. When the Claimant subsequently faced margin maintenance calls caused by declines in the value of those securities, he satisfied the first call, but lacked the funds necessary to fulfill his contractual obligations to Schwab in relation to two subsequent calls. As a result, shares were liquidated from the account in accordance with the terms of the written agreement between Claimant and Schwab. Contrary to the allegations of the claim, none of the securities at issue were ever held in a retirement account. Moreover, when the shares at issue were sold, Claimant realized a gain of approximately \$85,000.00, representing the difference between his cost basis in the shares and the price he received. Thus, Respondents asserted the absence of any cognizable losses or damages to the Claimant.

RELIEF REQUESTED

Claimant requested that the panel enter an award of actual damages in the amount of \$100,000.00, pre-judgment interest, costs, and such other relief as the panel deemed necessary and proper.

Respondents requested a dismissal of the Statement of Claim and further requested that James Singer be dismissed as a Respondent because he is not personally liable.

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 original remain on file with NASD Regulation, Inc.

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. Respondents Charles Schwab & Co., Inc. and James Singer are found liable, jointly and severally, and shall pay to the Claimant the sum of \$180,840.00 plus pre-judgment interest at the legal Florida rate until November 5, 1998.
2. Respondents Charles Schwab & Co., Inc. and James Singer are found liable, jointly and severally, for violation of Florida Statutes, Chapter 517.301 and, therefore, shall pay to the Claimant attorneys' fees in the amount of \$45,210.00.
3. Respondents Charles Schwab & Co., Inc. and James Singer shall pay to the Claimant the additional sum of \$950.00 as reimbursement for the \$200.00 claim filing fee and \$750.00 hearing session deposit previously paid by the Claimant to NASD Regulation, Inc.

OTHER FEES

Pursuant to Rule 10332 of the NASD Code of Arbitration Procedure ("the Code"), Claimant has paid to NASD Regulation, Inc. the \$200.00 claim filing fee.

Pursuant to Rule 10319 of the Code, Claimant has paid to NASD Regulation, Inc. the sum of \$750.00 representing the adjournment fee for the hearings scheduled to be conducted on July 16 and 17, 1998.

Pursuant to Rule 10333 of the Code, Respondent Schwab has paid to NASD Regulation, Inc. the \$350.00 member surcharge previously invoiced.

FORUM FEES

Pursuant to Rule 10332c of the Code, forum fees in the sum of \$6,000.00 [two (2) pre-hearing conferences (panel) X \$750.00 plus six (6) hearing sessions X \$750.00] are assessed against the Respondents, jointly and severally, for which NASD Regulation, Inc. shall retain the \$750.00 hearing session deposit previously paid by Claimant in partial satisfaction thereof, leaving a balance due in the amount of \$5,250.00.

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

Page Four
Award 97-02752

Concurring Arbitrators' Signatures

William S. Glickfield, Esq.

Public/Chairman

_____/s/
Gene G. Stern

Industry

_____/s/
Dana T. Fogg

Public

Date of Decision: December 31, 1998