

NASD REGULATION, INC., OFFICE OF DISPUTE RESOLUTION

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IN THE MATTER OF ARBITRATION BETWEEN

Charles Schwab & Co., Inc.,

Claimant

No. 97-06067

v.

Fred Weatherly,

Respondent

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**REPRESENTATION OF PARTIES**

Claimant Charles Schwab & Co., Inc. was represented by Diane Fischer, Esquire and Linda Gallagher, Esquire of Gomberg, Kane & Fischer, Ltd. Located in Chicago, Illinois.

Respondent Fred Weatherly was represented pro se.

**CASE INFORMATION**

Statement of Claim was filed on or about December 30, 1997.

Claimant's Submission Agreement was signed on November 26, 1997.

The NASD has no record of Respondent filing a Submission Agreement or Answer.

**HEARING INFORMATION**

A pre-hearing was held on September 23, 1999 for one (1) session with the full panel of arbitrators and October 23, 1999 for one (1) session with the full panel of arbitrators. The hearing was held on March 26, 1998 in Nashville, TN, for a total of two (2) sessions.

**CASE SUMMARY**

Claimant, Charles Schwab & Co., Inc. ("Claimant"), alleged the following: Respondent, Fred Weatherly ("Respondent"), opened account number 9240-6342 (the "Account") with Schwab.

In connection with opening the Account, Respondent executed a New Account Application by which Respondent acknowledged that he read, understood and agreed to the terms of a Cash Account Agreement (the "Agreement"). On April 19, 1995, a certificate for 100,000 shares of C&M Capital Corp. stock was deposited to Respondent's Account. Prior to when Respondent deposited his stock certificate with Schwab, the name of C&M Capital Corp. had been changed to American Entertainment Group, Inc. ("American Entertainment"). On April 20, 1995, Respondent directed the sale of 15,000 shares of American Entertainment stock in the Account, and on May 3, 1995, Respondent directed the sale of an additional 23,000 shares in

the Account. Pursuant to Respondent's instructions, Schwab issued two checks to Respondent for the proceeds of both sales, one in the amount of \$12,561.00 on May 8, 1995, and one in the amount of \$17,979.65 on May 10, 1995. In addition to the name change of C&M Capital Corp. to American Entertainment, there had been a previous 1,000 for 1 reverse stock split, and the certificate for 100,000 shares of C&M Capital Corp. deposited into the Account was equivalent to only 100 shares of American Entertainment. An adjustment was made to reflect the reverse stock split and the Account was left with a short position of 37,900 shares of American Entertainment at the end of June 1995. Claimant also alleged that Respondent failed to deposit shares to cover the short position and on July 7, 1995, Schwab was forced to buy-in 37,900 shares of American Entertainment stock, which left the Account with an unsecured debit balance of \$18,637.00. Claimant further alleged that during the period July 1995 through September 1997, Schwab tendered several demands to Respondent to pay the unsecured debit balance in the Account, plus interest. To date, Respondent has failed and refused to make such payment to Charles Schwab & Co., Inc.

### **RELIEF REQUESTED**

Claimant requested an award against Respondent as follows:

- The balance due as a result of the unsecured debit balance resulting from the July 7, 1995 purchase of 37,900 shares of American Entertainment in the amount of \$18,637.00;
- Interest in the amount of \$667.00 from July 7, 1995 through November 30, 1995 at the rate of 9% (\$4.60 per day);
- Interest in the amount of \$277.14 from December 1, 1995 through January 31, 1996 at the rate of 8.75% (\$4.47 per day);
- Interest in the amount of \$1,844.50 from February 1, 1996 through March 31, 1997 at the rate of 8.50% (\$4.34 per day);
- Interest in the amount of \$2,176.89 from April 1, 1997 through July 31, 1998 at the rate of 8.75% (\$4.47 per day);
- Interest in the amount of \$241.38 from August 1, 1998 to September 23, 1998 at the rate of 8.75% (\$4.47 per day);
- Interest until the balance is paid at the rate of 8.75% per annum (\$4.47 per day) as specified in the Agreement;
- Costs as agreed to under the terms of the Agreement; and
- Any other relief as the Arbitrators deem just.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties agreed that the Award in this matter may be executed in counterpart copies of 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 Regulation, Inc. Office of Dispute Resolution.

## AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrator have decided in full and final resolution of the issues submitted for determination as follows:

(1). That the Respondent Fred Weatherly is liable for and shall pay Claimant Charles Schwab & Co., Inc. actual damages in the amount of \$18, 637.00 and interest thereon in the amount of \$6,004.30;

(2). That 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 with prejudice.

## FORUM FEES

Forum fees are calculated at the rate of \$600.00 per full panel hearing session. There were two (2) full panel pre-hearing conferences and two full panel hearing sessions for a total of four (4) full panel hearing sessions x \$600.00 = \$2,400.00 in forum fees. Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure (the "Code") a hearing session is any meeting between the parties and the Arbitrators, including a pre-hearing conference with an Arbitrator which last four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, Claimant Charles Schwab & Co. Inc., has paid to the NASD Regulation, Inc., Office of Dispute Resolution, the non-refundable filing fee of \$500.00 and has also paid the hearing session deposit of \$600.00.

Respondent Fred Weatherly is liable for the forum fees in this matter and shall pay the sum of \$1,800.00 to the NASD Regulation, Inc. (The total \$2,400.00 forum fee less the \$600.00 hearing session deposit previously paid by Claimant.)

## OTHER FEES

Pursuant to Rule 10333 of the Code, Claimant Charles Schwab & Co. Inc. has paid the \$400.00 member surcharge previously invoiced.

Concurring Arbitrators Signatures:

Date:

/s/ Donald Aho

May 4, 1999

Donald Aho  
Public Arbitrator  
Chairperson

/s/ Michael Meyer

April 30, 1999

Michael Meyer  
Public Arbitrator  
/s/ Phil Lubetkin

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Phil Lubetkin  
Industry Arbitrator

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