

AWARD

NASD Regulation, Inc.

CASE: 98-00212 Douglas Myura vs. Charles Schwab & Co., Inc. and Peter Curley.

ATTORNEYS:

For Claimant: Bradley F. Rothenberg, Esq. of Mintmire and Associates, Palm Beach, Florida.

For Respondents Charles Schwab & Co., Inc. ("Schwab") and Peter Curley ("Curley"): Sean B. Meehan, Esq. of Charles Schwab & Co, Inc., San Francisco, California.

DATE FILED:

Statement of Claim filed: May 14, 1998.

Claimant's Submission Agreement signed on: December 15, 1997.

Respondents' Statement of Answer filed: September 11, 1998.

Respondent Schwab's Submission Agreement signed on: September 11, 1998 by Sean B. Meehan on behalf of the firm.

Respondent Curley's Submission Agreement signed on: September 11, 1998.

CASE SUMMARY: Claimant alleged the following: that on September 16, 1997, Claimant purchased 1,500 shares of American Eco. Corp ("ECGOF") through his Schwab IRA account via the e.Schwab Internet website; that on the same day, Claimant placed a stop loss order at a price of \$10.25 per share; that Claimant sold the stock on September 18, 1997 at \$13.75 per share; that on October 28, 1997, Respondent Curley exercised the stop loss at a price of 9 3/8 per share; that Claimant's IRA account did not permit sales in which the underlying stock is not owned at the time of sale; that it was not Claimant's intention to sell short; that Respondent Schwab violated the IRA account rules by selling the stock on margin and then purchasing stock to cover the sale; that when Claimant was subsequently asked by Respondent Curley, how he intended to cover the short sale, Claimant explained that he was told by another Schwab representative who had called him, that his IRA account would be credited by Schwab; and, that on or about November 3, 1997, Claimant's account was debited in the amount of \$3,875.44.

Respondents asserted the following: that on September 16, 1997, Claimant placed an unsolicited stop order over the Internet in his e.Schwab IRA account to sell all 1500 shares of ECGOF; that two days later, without cancelling his September 16, 1997 good until cancelled order, Claimant placed a second order in the same account via the Internet to sell 1500 shares of ECGOF; that upon being informed by Claimant that he did not have the shares to cover the short position, Schwab bought-in 1500 shares of ECGOF at a loss to Claimant's account of \$3,875.44; that

Claimant seeks to shift to Schwab the risk that he alone assumed by failing to cancel an existing good until cancelled sell order; that Claimant repeatedly failed to heed Schwab's explicit notifications that he had duplicated an existing order to sell ECGOF; and, that Claimant should be held responsible for his loss and his claim should be denied in its entirety.

OTHER ISSUES:

On September 10, 1998, Claimant withdrew his claim against Respondent Curley. Thereafter, this matter proceeded against Respondent Schwab only.

Claim Data

Claim: \$3,875.44

Award Data

Award: \$1,719.19

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) Respondent Schwab is found liable and shall pay to the Claimant the sum of \$1,719.19.

FORUM FEES: Pursuant to Rule 10302(c) of the NASD Code of Arbitration Procedure ("Code"), the arbitrator has assessed a forum fee in the amount of \$75.00 as follows:

1. Claimant is assessed the sum of \$37.50 for which NASD Regulation, Inc shall retain \$37.50 from the Claimant's initial hearing session deposit in full satisfaction thereof.
2. Respondent Schwab is assessed the sum of \$37.50.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent Schwab has paid to NASD Regulation, Inc. the \$200.00 member surcharge previously invoiced. The Claimant has paid to NASD Regulation, Inc. the claim filing fee of \$50.00.

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

Arbitrator's Signature


Bernard Kune, Esq.


Date of Decision