

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Name of Claimant

Charles Schwab & Co., Inc.

vs.

Case No.
98-00256

Name of Respondent

Carl DeFrietas

REPRESENTATION

For Claimant Charles Schwab & Co., Inc. ("Claimant") appeared Steve Lanum, Esq., Corporate Attorney for Respondent located in San Francisco, California.

Respondent Carl DeFrietas ("Respondent") appeared pro se.

CASE INFORMATION

Claimant's Statement of Claim was filed on January 16, 1998
Claimant's Submission Agreement was signed on January 9, 1998

Respondent's Statement of Answer was filed on March 16, 1998
Respondent's Submission Agreement was signed on March 12, 1998

HEARING INFORMATION

Pre-Hearing Conference:	June 3, 1998	-	1 Session
Hearing Dates/Sessions:	September 17, 1998	-	2 Sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

Claimant alleged that, on March 27, 1997 for settlement on April 2, 1997, Respondent purchased 350 shares of Zitel Corporation stock for a total cost of \$11,404.95. Claimant also alleged that, on April 7, 1997 for settlement on April 10, 1997, Respondent purchased 5000 shares of QPQ Corporation stock for a total cost of \$2,806.00. Claimant maintained that both of these purchases were made in Respondent's margin account and, as a result of these purchases, Respondent was required to deposit funds to cover the margin maintenance requirements in the account. In addition, Claimant contended that, despite its requests, Respondent failed to deposit the required funds. Claimant maintained that, on April 18, 1997, it was forced to liquidate the remaining positions in Respondent's account and after the liquidation, there was an unsecured debit balance of \$9,877.74.

Respondent contended that he bears no responsibility to Claimant because he was never advised that a debit balance in his account could ever possibly occur nor that he would be held personally responsible for any debit balance created in his account. Respondent also contended that the account application form and account agreement did not contain any language with respect to debit balances being created in margin accounts nor language stating that the account holder will be held responsible for debit balances.

In his counterclaim, Respondent contended that he was mislead, misrepresented, and generally not properly informed by Claimant and its representatives. Respondent further contended that had he been properly informed by Claimant and would have had full knowledge about the ramifications of the workings of the margin account, he would have taken the appropriate measures to maintain and protect a certain amount of account equity.

In response to the counterclaim, Claimant contended that Respondent was informed of its policies and agreed, in writing, to be bound by them. In addition, Claimant contended that he was furnished written notice of the terms applying to his account, and of his own duties, responsibilities, and obligations.

RELIEF REQUESTED

Claimant requested:

- a. The sum of \$9,877.74 on the unsecured debit balance resulting from the April 18, 1997 liquidation;
- b. Interest in the amount of \$749.03 on the above-referenced sum from April 1997 through October 29, 1997;
- c. Interest at the rate of 8.75% per annum (\$2.55 per day) in the amount of \$362.10 from October 30, 1997 through January 16, 1998;
- d. Interest until the balance is paid at the rate of 8.75% per annum (\$2.55 per day) as specified in the Agreement;
- e. Costs including the NASD filing fee of \$945.99;
- f. Accruing costs;

- g. Any other relief as the arbitrator deems just and proper.

In addition, Claimant requested that the counterclaims be dismissed in their entirety.

Respondent requested that the Statements of Claim be dismissed in its entirety. In his counterclaim, Respondent requested actual damages in the amount of \$20,000.00 plus filing costs in the amount of \$400.00 and other costs and outlays associated with this proceeding.

AWARD

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

1. Respondent be and hereby is liable for and shall pay to Claimant the sum of **NINE THOUSAND EIGHT HUNDRED SEVENTY SEVEN DOLLARS and SEVENTY FOUR CENTS (\$9,877.74)**.
2. Respondent be and hereby is liable for and shall pay to Claimant interest in the amount of \$1,365.00
3. Respondent's counterclaims are hereby denied.
4. All other requests are hereby denied.

OTHER COSTS

Pursuant to Rule 10333 of the Code of Arbitration Procedure ("Code"), Claimant has paid NASD Regulation, Inc. the \$300.00 member surcharge previously invoiced.

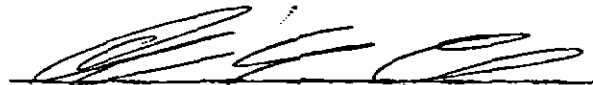
FORUM FEES

Pursuant to Rule 10332(c) of the Code, the arbitrators has determined that NASD Regulation, Inc. will retain the \$500.00 non-refundable filing fee submitted by Claimant and the \$100.0 non-refundable filing fee paid by Respondent, and have assessed the following forum fees:

1 Pre-hearing Conference	=	\$300.00
2 Hearing Sessions x \$300.00	=	\$600.00

1. Claimant be and hereby is liable for the sum of \$450.00, representing one-half of the total amount of forum fees assessed. Claimant previously deposited \$675.00 with NASD Regulation, Inc. and, therefore, does not owe any forum fees.
2. Respondent be and hereby is liable for the sum of \$450.00, representing one-half of the total amount of forum fees assessed. Respondent previously deposited \$300.00 with NASD Regulation, Inc. and, therefore, shall pay the balance of \$150.00 to NASD Regulation, Inc.

ARBITRATOR'S SIGNATURE


Charles A. Crocco, Jr., Esq.

Date of decision: Nov. 11, 1998

I, Charles A. Crocco, Jr., Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.


Charles A. Crocco, Jr., Esq