

## **AWARD**

**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Michael Bedner

and

Case Number 98-00380

Name of Respondent

Charles Schwab & Co., Inc.

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### **REPRESENTATION OF PARTIES**

Michael Bedner (hereafter referred to as "Claimant") was represented by James A. Stevens, Esq. of Richmond, Texas.

Charles Schwab & Co., Inc. (hereafter referred to as "Respondent") was represented by Sean Meehan, Esq.

### **CASE INFORMATION**

The Statement of Claim of Claimant was filed on or about February 2, 1998.

The Submission Agreement of Claimant was signed on May 12, 1997.

The Statement of Answer of Respondent was filed on or about March 24, 1998.

The Submission Agreement of Respondent was signed on March 4, 1998 by Linda Drucker, Vice President and Associate General Counsel.

### **HEARING INFORMATION**

A pre-hearing conference was held on October 28, 1998 for one (1) hearing session.

The hearing was held on January 29, 1999 in Houston, Texas for one (1) hearing session.

### CASE SUMMARY

Claimant Michael Bedner alleged that Respondent Charles Schwab & Co., Inc. negligently failed to place an order to buy 1,000 shares of Centennial Technologies, Inc. ("CNT") for his account. Claimant contended that on February 25, 1997, he gave oral instructions to the Respondent to sell all of his stock in First USA, Inc. and purchase 1,000 shares of CNT stock with the proceeds. Claimant stated that he was a day trader who had watched Centennial previously and expected the stock to double in price on February 25, 1997.

According to the Claimant, he placed his order with the Respondent for the two transactions over the telephone before the market opened on February 25, 1997. Claimant allegedly called Respondent at about 12:30 PM on the same day and was told that his shares of First USA Inc. had been sold but that there was no record of the second order. Claimant contended that in the taped conversation with the trader at Charles Schwab & Co., Inc., Claimant placed both orders. Claimant requested compensation for his lost profits in the amount of \$10,000.00.

Respondent Charles Schwab & Co., Inc. denied the allegations set forth in the Statement of Claim. Respondent specifically stated the Claimant placed only one order on February 25, 1997 to sell 100 shares of First USA Inc. Respondent contended that at no time did Claimant ever place an order to buy 1,000 shares of CTN, nor did a Charles Schwab representative confirm to Claimant that such an order was placed in his account. Respondent maintained that after Claimant indicated his intention to buy 1,000 shares of CTN, Claimant changed the direction of the conversation away from placing an order and did not confirm an order to buy CTN shares. Respondent contended that Claimant told the trader he would call back concerning an order to buy CTN after the trader informed Claimant of a CNN news story about the arrest of a former chairman of CTN and after the trader told him that CTN closed at 4 3/8 on February 24. Respondent asserted that Claimant failed to mitigate his damages by not placing a buy order at 12:30 PM on February 25, 1997 when he was told that he had not placed an order to purchase CTN. Respondent further asserted that even if Claimant had placed an order to buy shares of CTN on February 25, 1997, Claimant's maximum damages would be \$3,573.00.

### RELIEF REQUESTED

Claimant requested an award in the amount of \$10,000.00 in compensatory damages plus costs and attorneys' fees.

Respondent requested that the claims asserted against it be denied in its entirety.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties present at the hearing agreed to receive conformed copies of the award while the original remains on file with the NASD Regulation, Inc.

### **AWARD**

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

1. The Statement of Claim submitted by Claimant Michael Bedner is denied in its entirety and dismissed with prejudice; and
2. Other than forum fees addressed below, all claims and relief requests not specifically awarded are denied in their entirety and dismissed with prejudice.

### **FORUM FEES**

Forum fees are calculated at the rate of \$200.00 per hearing session. There were two (2) hearing sessions x \$200.00 = \$400.00 in forum fees. Pursuant to Rule 10332(b) of the Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

Pursuant to Rule 10332(c) of the Code, the NASD Regulation, Inc. shall retain the non-refundable filing fee in the amount of \$75.00 and shall retain as forum fees the hearing session deposit in the amount of \$200.00 previously deposited with the NASD Regulation, Inc. by the Claimant. Claimant Michael Bedner is liable for and shall pay to the NASD Regulation, Inc. the amount of \$200.00 in additional forum fees.

### **OTHER COSTS**

Pursuant to Rule 10333 of the Code, Respondent Charles Schwab & Co., Inc. has paid to the NASD Regulation, Inc. the \$300.00 member surcharge previously invoiced.

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FAX COVER SHEET

Fees are payable to the NASD Regulation, Inc.

Arbitrator's Signature:

Dated:

  
Franklin Anthony Arnold, Esq.  
Public Arbitrator, Presiding Chair

5/25/99

For NASD only:

Date served: