

AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Barbara Shore

98-02526

Names of Respondents

Shochet Securities, Inc.
Schroder Wertheim & Co. Inc.

REPRESENTATION

For Claimant: Andrew K. Fein, Esq. of Bloch & Minerley, P.L., Boca Raton, Florida.

For Respondent Shochet Securities, Inc. ("Shochet"): Neil S. Baritz, Esq. of Shochet Securities, Inc., Boca Raton, Florida.

For Respondent Schroder Wertheim & Co., Inc. ("Schroder"): Michael M. Gless, Esq. of Keesal, Young and Logan P.C., Long Beach, California.

CASE INFORMATION

Statement of Claim filed: July 6, 1998.

Claimant's Submission Agreement signed: June 29, 1998.

Statement of Answer filed by Respondent Shochet: October 15, 1998.

Respondent Shochet's Submission Agreement/Corporate Acknowledgment signed: April 13, 1999 by Robert M. Reback on behalf of firm.

Statement of Answer filed by Respondent Schroder: October 12, 1998.

Respondent Schroder's Submission Agreement/Corporate Acknowledgment signed: October 9, 1999 by Mark R. Grewe on behalf of the firm

HEARING INFORMATION

On January 25, 1999, the arbitration panel conducted a pre-hearing conference which lasted one (1) session.

On April 13, 1999, the evidentiary hearing which lasted two (2) sessions was conducted in Boca Raton, Florida.

CASE SUMMARY

Claimant alleged that: she had a brokerage account with Shochet, a full service discount brokerage firm in Tamarac, Florida, with Schroder Wertheim & Company, Inc. acting as the clearing broker; that in December of 1997, she wrote checks in the amounts of \$70,020.00 and \$28,000.00, respectively, against her account in order to purchase securities through another brokerage firm, DLJ Direct, Inc.; that both checks were wrongfully dishonored by Respondents, and returned to Claimant; and, that the checks were dishonored although there was sufficient funds in the account to cover the checks at the time the checks were written and presented. Claimant next alleged that prior to writing the checks, Robert M. Reback of Shochet confirmed verbally that there were sufficient funds in the account to cover each check but that a computer error had caused the rejection.

Respondent Shochet denied the allegations of wrongdoing contained in the Statement of Claim and alleged that Claimant failed to timely deliver shares of stock in settlement of trades she effected in her account; that contemporaneous with such failure, Claimant chose to write checks against her account to purchase securities at another brokerage firm prior to the settlement of the trades; that all of the foregoing circumstances were in Claimant's exclusive control; and, that any decisions Claimant made were hers and hers alone. Respondent Shochet further asserted that any resulting damages, if any, should be the responsibility of Claimant in that Claimant, by her own actions, caused her account to be lacking the necessary funds against which she could write checks and that what happened at another brokerage firm when such checks were rejected, is Claimant's own fault.

As affirmative defenses, Respondent Shochet alleged the following: that Claimant failed to state a cause of action upon which relief can be granted; that any alleged obligations on the part of Shochet, to the extent such existed, were discharged and/or excused due to Claimant's negligence; insofar as Claimant has suffered any damages, Claimant failed to mitigate her damages; that insofar as Claimant has suffered any damages, her damages were proximately caused by her own reckless conduct, negligence, failure to conduct her own due diligence and/or breach of duty; that Claimant's claims are barred under the doctrines of release, waiver, equitable estoppel, ratification, accord and satisfaction; that to the extent that any damages suffered or claimed to have been suffered by Claimant were caused, directly or indirectly, by persons or entities other than Shochet, Shochet is entitled to be indemnified and held harmless against any losses, claims, damages or liabilities to which it may become subject.

Respondent Schroder denied the allegations of wrongdoing contained in the Statement of Claim and maintained that Claimant had insufficient funds in her checking account to honor the two checks at issue when they were presented for payment.

RELIEF REQUESTED

Claimant requested damages in the amount of \$79,025.78 plus interest, attorneys' fees, and arbitration costs.

Respondent Shochet requested a dismissal of all claims against it and that it be awarded its fees and costs incurred in defense of this matter.

Respondent Schroder requested a dismissal of the Claim.

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 originals remain on file with NASD Regulation, Inc.

During the hearing Respondent Schroder asserted a Motion to Dismiss which was granted by the arbitration panel.

AWARD

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

1. Respondent Shochet is found not liable and, therefore, all claims against it are hereby denied.
2. Claimant's request for interest is hereby denied.
3. As stated above in "Other Issues", all claims against Respondent Schroder are dismissed.
4. The parties shall each bear their respective costs and expenses, including attorneys' fees, incurred in connection with this proceeding.

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 arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the arbitration panel has assessed forum fees in the amount of \$1,500.00 (one (1) pre-hearing conference (panel) x \$500.00 + two (2) hearing sessions x \$500.00) as follows:

1. Claimant is assessed forum fees in the amount of \$750.00 for which NASD Regulation, Inc. shall retain the \$500.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by Claimant in the amount of \$250.00.
2. Respondent Shochet is assessed forum fees in the amount of \$1,500.00 payable to NASD Regulation, Inc.

OTHER FEES

Pursuant to Rule 10332 of the Code, Claimant has paid to NASD Regulation, Inc. the claim filing fee of \$150.00.

Pursuant to Rule 10333 of the Code, Respondents Shochet and Schroder have each paid to NASD Regulation, Inc. the member surcharge of \$1,000.00.

Pursuant to Rule 10333(d) of the Code, Respondents Shochet and Schroder have each paid to NASD Regulation, Inc. the pre-hearing process fee of \$600.00.

Pursuant to Rule 10333(d) of the Code, Respondents Shochet and Schroder have each paid to NASD Regulation, Inc. the hearing process fee of \$1,500.00.

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

ARBITRATION PANEL

Concurring Arbitrators' Signatures

_____/s/_____
Myron S. Dunay, Esq.

Public/Chairperson

_____/s/_____
Martin P. Bergman

Public/Panelist

_____/s/_____
James A. Roth

Industry/Panelist

Date of Decision: May 14, 1999

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Public/Chairperson

Martin P. Bergman
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Public/Panelist

James A. Roth

Industry/Panelist

Date of Decision:

NASD Award #94-02370

1. Claimant's account of \$500.00 previously deposited by the Claimant in partial satisfaction thereof leaving a balance due to NASD Regulation, Inc. by Claimant in the amount of \$250.00.
2. Respondent Shochet is assessed forum fees in the amount of \$1,500.00 payable to NASD Regulation, Inc.

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