

## AWARD

### NASD Regulation, Inc.

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NASD CASE NO.: 98-03852

Charles Schwab & Co., Inc., Claimant vs. David S. Batchelder, Respondent

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#### REPRESENTATION:

For Claimant: Diane C. Fischer, Esq. and Linda A. Gallagher, Esq. of Gornberg Kane & Fischer, Ltd., Chicago, Illinois.

For Respondent: Mark P. Dugan, Esq. of O'Connor, Morss & O'Connor, P.C., Elizabeth, New Jersey.

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DATE FILED: October 16, 1998

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#### CASE SUMMARY:

Claimant ("Schwab") alleged the following: On or about September 11, 1996, Respondent opened an account with Schwab, and on or about December 11, 1996, Respondent executed a Margin Agreement. During January 1997, Respondent entered into various transactions in his account on margin. As a result of these transactions, as well as market fluctuations in February 1997, Schwab notified Respondent that he needed to deposit additional funds into his account to meet margin maintenance requirements, but Respondent failed to do so. Consequently, on February 19, 1997, Schwab was forced to liquidate the remaining positions in Respondent's account, leaving an unsecured debit balance of \$18,328.77 at the end of February 1997. From March through December, 1997, Respondent made deposits totaling \$2,500.00 into the account and a credit of \$695.06 was transferred to the account from Respondent's IRA account. In addition, interest in the amount of \$1,291.53 accrued from March 1997 through December 1997, leaving the account with an unsecured debit balance of \$16,425.24 at the end of December 1997. From October 1997 through May 1998, Schwab sent to Respondent several demands for payment of the debit balance in his account, but Respondent has failed to make such payment.

Respondent denied the allegations of wrongdoing set forth in the Statement of Claim and asserted that he was not obligated to pay Schwab the debit balance in his Account. Respondent requested that Claimant's Statement of Claim be dismissed in its entirety with prejudice, together with an award in his favor of his attorneys' fees and costs.

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#### CLAIM DATA

Claim: \$16,425.24  
Interest: \$1,889.67  
Filing Fees: \$1,500.00  
Other Costs: \$669.02

#### AWARD DATA

Award: \$16,425.24  
Interest: \$1,889.67  
Filing Fees: \$300.00  
Other Costs: \$392.02

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**OTHER ISSUES:**

Claimant requested a hearing before a panel of three arbitrators in its initial Statement of Claim. Thereafter, in its Amended Statement of Claim filed on February 12, 1999, Claimant requested that this matter be determined by a single arbitrator, solely upon the pleadings and evidence submitted by the parties, pursuant to Rule 10302 of the Code of Arbitration Procedure (the "Code"). As there was no objection thereto filed by the Respondent, and Respondent did not demand a hearing pursuant to Rule 10302(f) of the Code, this matter was decided by the undersigned arbitrator solely upon the papers submitted.

Respondent did not file with the NASD Regulation, Inc., Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the Code and, having answered the claim, is bound by the determination of the arbitrator on all issues submitted.

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**AWARD:**

The undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows: 1) Respondent is found liable and shall pay to Claimant total damages, including accrued interest through March 29, 1999, in the sum of \$18,314.91, plus interest on the unpaid balance of the aforesaid total damages at the rate of 8.25% per annum from March 30, 1999 until this award has been fully satisfied. 2) Respondent shall further pay to Claimant costs in the sum of \$392.02, plus an additional \$300.00 as reimbursement of the hearing session deposit previously paid by Claimant, for total costs payable to Claimant in the amount of \$692.02. 3) All other claims for relief not specifically addressed herein are denied.

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**OTHER FEES:**

Pursuant to Rule 10332 of the Code, the \$500.00 claim filing fee and the \$300.00 hearing session deposit previously paid by Claimant shall be retained by NASD Regulation, Inc. Pursuant to Rule 10333 of the Code, Claimant has paid to NASD Regulation, Inc. the \$400.00 member surcharge previously invoiced.

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**AFFIRMATION**

I, Stephen P. Hoffman, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

/s/  
Stephen P. Hoffman, Esq.

September 2, 1999  
Date of Award

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**AFFIRMATION**

I, Stephen P. Hoffman, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
Stephen P. Hoffman, Esq.

September 2, 1999  
Date of Award