

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between

Name of Claimant

Craig Dirgo

Case No. 99-00393

Name of Respondent

Charles Schwab & Company, Inc.

Name of Third Party Respondent

Larry John Dirgo

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**REPRESENTATION OF PARTIES**

For Claimant Craig Dirgo ("Dirgo"): John N. Buso, Esq. of John N. Buso, P.A., West Palm Beach, Florida.

For Respondent Charles Schwab & Company, Inc. ("Charles Schwab"): Neil S. Baritz, Esq. of Dreier & Baritz, Boca Raton, Florida.

Third Party Respondent Larry John Dirgo ("Larry Dirgo") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on: February 24, 1999

Claimant signed the Uniform Submission Agreement on: January 22, 1999.

Statement of Answer and Third Party Claim filed by Respondent Charles Schwab on: May 5, 1999.

Respondent Charles Schwab's Uniform Submission Agreement signed on: April 2, 1999 by Rhonda Y. Jones, Corporate Attorney, on behalf of the firm.

Third Party Respondent Larry Dirgo did not file with NASD Regulation, Inc. a Statement of Answer or a properly executed Uniform Submission Agreement.

### **CASE SUMMARY**

Claimant alleged the following: Respondent Charles Schwab purchased unsuitable investments, including options, for his individual account at Charles Schwab in violation of CBOE rules; that Respondent did not disclose the mandatory requirement to arbitrate at the time the account was opened; that Respondent Charles Schwab allowed him to purchase options although he failed to meet their own internal minimum equity requirements; and, that Respondent Charles Schwab's decision to allow an unqualified investor to trade in ultra high-risk investments led to Claimant suffering from a stomach ulcer that could potentially have life long effects.

Unless specifically admitted in its Answer, Respondent Charles Schwab denied the allegations of wrongdoing contained in the Statement of Claim and asserted the following defenses: Claimant failed to state a cause of action upon which relief can be granted; Claimant breached his duty to prudently and properly manage his own affairs; Claimant failed to mitigate his damages; Claimant failed to conduct his own due diligence; Claimant failed to object and/or complain about any actions taken in his account; Claimant is barred from recovery against Respondent under the doctrines of indemnification and contribution; and, Claimant's claims are barred under the doctrines of waiver, equitable estoppel and ratification.

Respondent Charles Schwab asserted a third party claim against Larry Dirgo (Claimant's brother) based upon the alleged Authorization Agreement under which Larry Dirgo was granted trading authorization with respect to Claimant's account and agreed to indemnify Charles Schwab and hold it harmless from and against any claims, actions, costs and liabilities arising from, among other things, any breach of any provision of the Authorization Agreement.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$133,761.00.

Respondent Charles Schwab requested a dismissal of the Statement of Claim, an award of indemnification and/or contribution on its third party claim against Larry Dirgo and such other and further relief deemed just and proper by the arbitrators.

### **OTHER ISSUES CONSIDERED AND DECIDED**

At the commencement of the evidentiary hearing, the arbitration panel granted Respondent Charles Schwab's motion to bar against Third Party Respondent Larry Dirgo.

Third Party Respondent Larry Dirgo did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code, and having appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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.

### **AWARD**

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

1. Respondent Charles Schwab is found not liable and, therefore, all claims against it are hereby denied.
2. Third Party Respondent Larry Dirgo is found not liable and, therefore, the third party claim against him is hereby denied.
3. Any other claim for relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$200.00
Third party claim filing fee	= \$500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm, Charles Schwab, is a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

**Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel x \$750.00	= \$750.00
Pre-hearing conference date: August 18, 1999	1 session
Three (3) Hearing sessions x \$750.00	= \$2,250.00
Hearing dates: January 25, 2000	2 sessions
January 26, 2000	1 session
Total Forum Fees	= \$3,000.00

The Panel has assessed \$1,500.00 of the forum fees to Claimant.

The Panel has assessed \$1,500.00 of the forum fees to Respondent Charles Schwab.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 200.00
Forum Fees	= \$1,500.00
Total Fees	= \$1,700.00
<u>Less payments</u>	<u>= \$1,250.00</u>
Balance Due NASD Regulation, Inc.	= \$ 450.00

Respondent Charles Schwab be and hereby is solely liable for:

Third Party Claim Filing Fee	= \$ 500.00
Member Fees	= \$4,600.00
Forum Fees	= \$1,500.00
Total Fees	= \$6,600.00
<u>Less payments</u>	<u>= \$5,850.00</u>
Balance Due NASD Regulation, Inc.	= \$ 750.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Martin Greenbaum  
(Public/Chairperson)

\_\_\_\_\_  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Carl J. Hegner  
(Industry/Panelist)

\_\_\_\_\_  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Martin P. Bergman  
(Public/Panelist)

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Signature Date

March 16, 2000

Date of Service (For NASD office use only)

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Martin Greenbaum  
Martin Greenbaum  
(Public/Chairperson)

14 March 2000  
Signature Date

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Carl J. Hegner  
(Industry/Panelist)

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Signature Date

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Martin P. Bergman  
(Public/Panelist)

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Signature Date

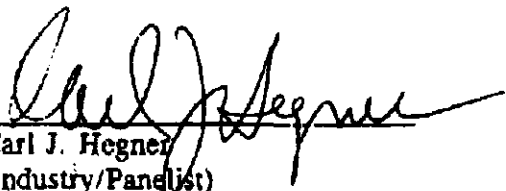
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3/14/2000  
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Signature Date

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Martin P. Bergman  
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