

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Themi H. Demas and Christina A. Demas, (Claimants) vs. Charles Schwab & Co., Inc.,
(Respondent).

Case Number: 99-00700

Hearing Site: San Francisco, California.

REPRESENTATION OF PARTIES

Themi H. Demas and Christina A. Demas hereinafter collectively referred to as "Claimants":
George G. Benetatos, Esq., Law Offices of George G. Benetatos, San Francisco, California.

Charles Schwab & Co., Inc., hereinafter collectively referred to as "Respondent": Kelly J.
Moynihan, Esq., Keesal, Young & Logan, San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: February 17, 1999.

Claimant signed the Uniform Submission Agreement: February 10, 1999.

Statement of Answer filed by Respondent on or about: May 14, 1999.

Respondent executed the Uniform Submission Agreement: June 11, 1999.

CASE SUMMARY

Claimants contend that Respondent is estopped to enforce, *inter alia*, the provisions of the Account Agreement concerning liquidation without notice, and resetting of the margin requirement without notice. Estoppel applies for the following reasons: during the 7 years prior to the August 31, 1998 liquidation, Respondent always gave oral and written notice whenever the Claimants' account went into maintenance; also Respondent always allowed for a grace period of several days to take the account out of maintenance; and, on August 31, 1998, for the first time in 7 years of account activity, the Respondent sold stock without notice, in order to take the account out of maintenance.

Claimants further contend that on August 28, 1998, the account was out of maintenance, and that on August 31, 1998, when the account went into maintenance, Respondent was obligated to provide oral and written notice, and several days grace period, before selling any stock to take the account out of maintenance. Respondent did not provide such notice and grace period.

Claimants further contend that estoppel should be applied because the conduct of the Respondent induced Claimants to take such a position that Claimants would be injured if Respondent should be permitted to repudiate its acts. As of August 31, 1998: (1) Respondent knew of its prior

conduct, and Respondent knew, or should have known, that such conduct encouraged Claimants to purchase stock on margin more often than would have occurred, absent the prior conduct; (2) Respondent intended that its conduct would encourage Claimant to make additional purchases on margin, or Respondent's conduct caused Claimants to reasonably believe that Respondents' conduct was intended to encourage Claimants to make additional purchases of stock on margin; (3) Claimants were ignorant of the Respondent's intent to enforce suddenly, for the first time in 7 years, the provision of the Account Agreement concerning liquidation without notice and setting of the margin rate without notice; and, (4) Claimants relied on Respondent's conduct during the previous 7 years, to the injury of Claimants, by believing that, notwithstanding the account going into maintenance on August 31, 1998, Respondent would not sell stock without oral and written notice, and without a grace period of several days, in order to take the account out of maintenance. As a proximate result of Respondent's sale of stock without notice, on August 31, 1998, Claimants were damaged in the amount of at least \$420,000.

Authority in support of Claimants' contentions regarding estoppel include Evidence Code §623, and DRG/Beverly Hills Ltd. V. Chopstix Dim Sum Cafe & Takeout III, Ltd. (1994) 30 CA 4th 59, 59.

Claimant also contend that Respondent sold stock substantially in excess of the amount needed to take the account out of maintenance. As a result of such conduct, Claimants were damaged in an amount in excess of \$120,000, and to be proved at the arbitration.

Claimants also contend the Account Agreement was modified in accord with Civil Code §1698(b), so as to require oral and written notice and several days grace period, before Respondent would sell stock to take the account out of maintenance. As a proximate result of Respondent's breach of the modified Account Agreement, Claimants were damaged in the amount of at least \$420,000.

Respondent Charles Schwab & Co., Inc., ("Respondent") denied Claimants' claims in their entirety and stated that Claimants are not entitled to any relief whatsoever. Respondents maintained that all of its actions in connection with the liquidation of securities in question were done in accordance with (1) the terms of its written agreement with Claimants, (2) applicable rules, regulations, and laws, (3) industry standards, and (4) its own internal policies and procedures. Respondent contended that it expressly notified Claimants of the equity deficiency in their account and of the need for them to stay in close contact with Respondent regarding that deficiency. Respondent further contended that Claimants' alleged losses flowing from their inability to manage the liquidation of their securities resulted solely from their failure to contact Respondent at a time when Claimants actually knew of the deficient equity balance in their account. Respondent requested dismissal of Claimants' claims in their entirety, together with an award of all appropriate costs in Respondent's favor.

RELIEF REQUESTED

Claimants requested:

Actual Damages

\$420,000.00; amended at the hearing
to \$178,275.00 plus interest.

Punitive Damages

Withdrawn at the hearing.

OTHER ISSUES CONSIDERED AND 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.

AWARD

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

1. Each and every claim asserted in the Statement of Claim is dismissed;
2. Each side to bear their own costs and expenses, including attorneys' fees.

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

Member Fees

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

Member surcharge = \$1,500
Pre-hearing process fee = \$ 600
Hearing process fee = \$2,500

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided

without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

Charles Schwab & Co., Inc. requested copies of the hearing tapes -\$150.

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session(s) with a single arbitrator x \$300	= \$300
Pre-hearing conference(s): November 3, 1999 1 session.	
Two (2) Pre-hearing session(s) with Panel x \$750	= \$1,500
Pre-hearing conference(s): November 5, 1999 1 session;	
January 14, 2000 1 session.	
Six (6) Hearing sessions x \$750	= \$4,500
Hearing Date(s): February 1, 2000 2 sessions;	
February 2, 2000 2 sessions;	
February 16, 2000 2 sessions.	

Total Forum Fees	= \$6,300
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1. The panel waived the \$300 forum fee for the November 3, 1999 pre-hearing conference.
2. The Panel has assessed all remaining forum fees in the amount of \$6,000 to the Claimants.

Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 200
<u>Forum Fees</u>	= \$6,000
Total Fees	= \$6,200
<u>Less payments</u>	= \$ 950
Balance Due NASD Regulation, Inc.	= \$5,250

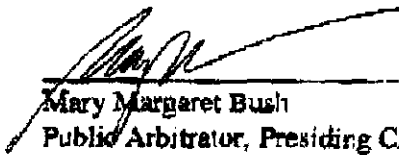
2. Respondent is solely liable for:

Member Fees	= \$4,600
<u>Administrative Costs</u>	= \$ 150
Total Fees	= \$4,750
<u>Less payments</u>	= \$4,750
Balance Due NASD Regulation, Inc.	= \$ 0

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

Concurring Arbitrators' Signature(s)



Mary Margaret Bush
Public Arbitrator, Presiding Chair

3.17.2000

Signature Date

Jo Lynn Lambert, Esq.
Public Arbitrator

Signature Date

Carlos Richard Mangum
Industry Arbitrator

Signature Date

Date Served:

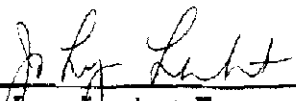
MAR 20 2000

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

Concurring Arbitrators' Signature(s)

Mary Margaret Bush
Public Arbitrator, Presiding Chair

Signature Date



Jo Lynn Lambert, Esq.
Public Arbitrator

3-12-00

Signature Date

Carlos Richard Mangum
Industry Arbitrator

Signature Date

Date Served:

MAR 20 2000

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

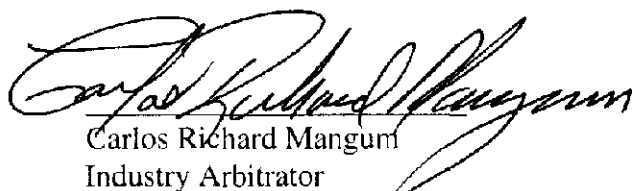
Concurring Arbitrators' Signature(s)

Mary Margaret Bush
Public Arbitrator, Presiding Chair

Signature Date

Jo Lynn Lambert, Esq.
Public Arbitrator

Signature Date



Carlos Richard Mangum
Industry Arbitrator

3-13-2000
Signature Date

Date Served:
MAR 20 2000