

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Charles Schwab & Co., Inc., (Claimant) vs. Michael Green, (Respondent)

Case Number: 99-02628

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Charles Schwab & Co., Inc., hereinafter referred to as "Claimant": Richard A. Karoly, Esq., Corporate Attorney, Charles Schwab & Co., Inc.

Respondent, Michael Green, hereinafter referred to as "Respondent", did not appear at the hearing in this matter. Previously represented by: Philip Raible, Esq., Mintz & Gold, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: June 7, 1999.

Claimant signed the Uniform Submission Agreement: June 4, 1999.

Statement of Answer filed by Respondent on or about: October 17, 1999.

Respondent did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to make payment for the purchases of Internet America stock, Cisco Systems call options, and Yahoo, Inc. call options, resulting in a debit balance in Claimant's account; violation of account agreement; and refusal to satisfy the debit balance in Claimant's account.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant breached its duty to Respondent by allowing him to place the trades in question; Claimant failed to incorporate the appropriate trading restrictions to purchasers who effected transactions through Claimant's website; and Claimant's negligence and failure to adhere to generally accepted standards, and its own policy, was the proximate cause of the losses occasioned in Respondent's account.

### **RELIEF REQUESTED**

Claimant requested:

1. Compensatory damages in the amount of \$59,654.45;
2. Interest at the rate of 7.25% per annum from and after February 1, 1999, through the present, said interest amounting to \$12.00 per day;
3. Costs incurred herein;
4. Reasonable attorneys' fees; and
5. Such other and further relief as the Panel deems appropriate.

Respondent did not make any relief requests in his Statement of Answer.

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

Claimant made a request for a telephonic hearing in this matter. After due consideration, the Panel granted said request.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code, as well as the terms of his customer account agreement, and, having answered the claim, 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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$59,654.45 as compensatory damages, plus interest at the rate of 7.5% per annum accruing from December 30, 1998 until payment.

2. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$1,000.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
3. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$1,000.00
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#### **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, Charles Schwab & Co., Inc. is a party.

Member surcharge	= \$1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,500.00

#### **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 Panel x \$750.00	= \$ 750.00
Pre-hearing conference: January 22, 2001	1 session
One (1) Hearing session x \$750.00	= \$ 750.00
Hearing Date: April 25, 2001	1 session
Total Forum Fees	= \$1,500.00

The Panel has assessed all of the forum fees against Respondent.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$1,000.00
Member Fees	= \$3,100.00
Total Fees	= \$4,100.00
Less payments	= \$4,850.00
Refund Due Claimant	= \$ 750.00

*As stated in the "Award" section above, Respondent is liable and shall reimburse Claimant for the \$1,000.00 filing fee.*

2. Respondent be and hereby is solely liable for:

Forum Fees	= \$1,500.00
Total Fees	= \$1,500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,500.00

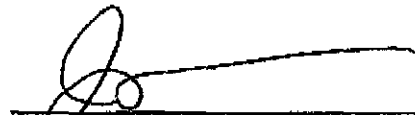
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

John F. Tague, III, Esq.	-	Public Arbitrator, Presiding Chair
William E. Nuckel	-	Public Arbitrator
Herbert Z. Geiger, Esq.	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
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John F. Tague, III, Esq.  
Public Arbitrator, Presiding Chair

5/29/01  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
William E. Nuckel  
Public Arbitrator

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

\_\_\_\_\_  
Herbert Z. Geiger, Esq.  
Industry Arbitrator

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

May 30, 2001

\_\_\_\_\_  
Date of Service (For NASD office use only)

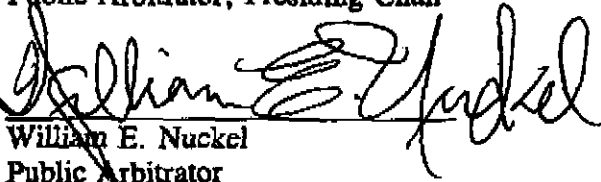
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William E. Nuckel  
Public Arbitrator

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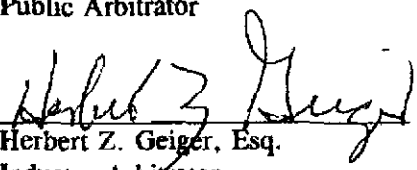
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