

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

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In the Matter of the Arbitration Between:

Charles Schwab & Co., Inc., (Claimant) vs. Esther Zivyon, (Respondent)

Case Number: 99-02757

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant, Charles Schwab & Co., Inc., hereinafter referred to as "Claimant": Mauricio S. Beugelmans, Esq., Corporate Attorney, Charles Schwab & Co., Inc., San Francisco, CA. Previously represented by: Edmund V. Saucedo, Case Manager, Charles Schwab & Co., Inc., San Francisco, CA.

Respondent, Esther Zivyon, hereinafter referred to as "Respondent", did not appear at the hearing in this matter.

**CASE INFORMATION**

Statement of Claim filed on or about: June 14, 1999.

Claimant signed the Uniform Submission Agreement: June 11, 1999.

Respondent did not file a Statement of Answer or sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following cause of action: Respondent failed and refused to pay an unsecured debit balance in her account.

**RELIEF REQUESTED**

Claimant requested principal damages in the sum of \$40,444.50; interest at the rate of 7.75% per annum from and after February 1, 1999, through the present; the filing costs incurred; and such other and further relief as the Panel may deem just and proper.

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

Upon review of the file and the representations made on behalf of the Claimant, and in consideration of the fact that Respondent's husband, Ayal Zivyon, participated in the pre-hearing conference in this matter on Respondent's behalf, 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 said 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 and the terms of her customer account agreement, and is bound by the determination of the Panel on all issues submitted.

Claimant made a motion requesting that the Panel render a decision solely on the pleadings and documentary evidence. The panel denied that request, but decided to conduct the hearing in this matter telephonically.

The Award in this matter may be executed in counterpart copies.

### **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 \$40,444.50 as compensatory damages.
2. Respondent be and hereby is liable for and shall pay to Claimant the sum of \$4,959.00, representing interest for the period of February 1, 1999 through September 6, 2000.
3. 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.
4. 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	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

#### **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 \$600.00	= \$ 600.00
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Pre-hearing conference: June 21, 2000	1 session
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One (1) Hearing session x \$600.00	= \$ 600.00
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Hearing Date: September 6, 2000	1 session
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Total Forum Fees	= \$1,200.00
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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
<u>Member Fees</u>	= \$2,400.00
Total Fees	= \$3,400.00
<u>Less payments</u>	= \$4,600.00
Refund Due Claimant	= \$1,200.00

*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:

<u>Forum Fees</u>	= \$1,200.00
Total Fees	= \$1,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,200.00

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

**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.

Arnold O. Flicker  
Arnold O. Flicker, Esq.,  
Public Arbitrator, Presiding Chair

Sept 18, 2000  
Signature Date

Lotte Fields  
Lotte Fields  
Public Arbitrator

Signature Date

John J. Witkowski, Jr., Esq.  
John J. Witkowski, Jr., Esq.  
Industry Arbitrator

Signature Date

October 3, 2000  
Date of Service (For NASD office use only)

**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.

\_\_\_\_\_  
Arnold O. Flicker, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
*Lotte Fields*  
Lotte Fields  
Public Arbitrator

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*9/18/00*  
Signature Date

\_\_\_\_\_  
John J. Witkowski, Jr., Esq.  
Industry Arbitrator

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

\_\_\_\_\_  
*October 3, 2000*  
Date of Service (For NASD office use only)

**Concurring Arbitrators' Signatures**

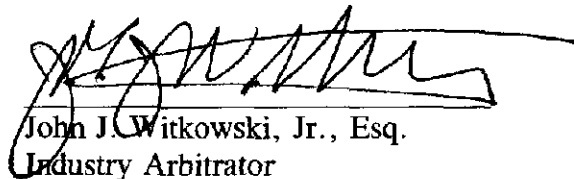
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

\_\_\_\_\_  
Arnold O. Flicker, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Lotte Fields  
Public Arbitrator

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

  
\_\_\_\_\_  
John J. Witkowski, Jr., Esq.  
Industry Arbitrator

*September 18, 2000*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
October 3, 2000  
Date of Service (For NASD office use only)