

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

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In the Matter of the Arbitration Between

Name of Claimants

William M. and Louise Keane

Case No. 99-03259

Name of Respondent

Charles Schwab & Company, Inc.

Hearing Location:

Philadelphia, PA

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**REPRESENTATION OF PARTIES**

Claimants, William M. Keane and Louise Keane, JT TEN ("Claimants") were represented by Michael P. Mangan, Attorney at Law, New York, NY.

Respondent, Charles Schwab & Co., Inc. ("Respondent") was represented by Steve Murphy, Corporate Attorney at Charles Schwab & Co., Inc., San Francisco, CA.

**CASE INFORMATION**

Statement of Claim filed on or about: July 16, 1999

Amended Statement of Claim filed on or about: June 7, 2000

Claimants signed their Uniform Submission Agreement: July 16, 1999

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

Amended Statement of Answer filed by Respondent on or about: July 5, 2000

Respondent's Uniform Submission Agreement was executed by Albert Zecher, Corporate Attorney on: October 14, 1999

Respondent's Second Uniform Submission Agreement was executed by Albert Zecher, Corporate Attorney on: February 7, 2000

**CASE SUMMARY**

Claimants alleged, among other things, the following: Claimants intended only to sell the 1,000 shares of CNET stock in their account. Claimants alleged that they did not intend and did not authorize Respondent to sell an additional 1,000 shares of CNET stock or to sell

1,000 shares of CNET short. Claimants alleged that Respondent charged their account with a transaction that they did not order or authorize; that Respondent ignored Claimants e-mail and thereby failed to treat the second sell order as a duplicate order and failed to recognize that Claimants were attempting to sell a single block at 1,000 shares of CNET; and that Respondent provided defective software.

Respondent denied all allegations of wrongdoing asserted by Claimants and maintained among other things, the following: that the Claimants loss is directly attributable to their failure to properly inform Respondent of the duplicate order, their failure to mitigate their loss by covering their position and their failure to read the warnings provided by Respondent regarding the placement of the second order; and, that Claimants have not alleged facts which would merit a punitive damages award.

### **RELIEF REQUESTED**

Claimants, in their Amended Statement of Claim, requested:

Compensatory Damages	\$43,209.63
Punitive Damages	\$5 million
Interest (from 4/20/99 until Award)	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Commissions	\$59.98

Claimants, at the hearing, further specified relief requested in its Summary of Compensatory Damages (Ex. C-42).

Respondent, in its Answers, requested that the Claimants' claim be denied in its entirety, that all forum fees and costs of the arbitration be assessed against Claimants and that Claimants' claim for punitive damages and attorney's fees be denied in their entirety.

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

That during the course of the arbitration William Zysk became unable to continue on the arbitration panel, pursuant to Rule 10313 of the Code of Arbitration Procedure ("Code"), he was replaced by G. Rick O'Shea. At the hearing on March 28, 2001, Mr. O'Shea was accepted by the parties as the new arbitrator on the panel.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent is liable to Claimants and shall pay to Claimants the sum of \$35,000; plus interest at the rate of 6% per annum from April 27, 1999 until the date the Award is paid.
2. That Claimants' claim for punitive damages is denied in its entirety.
3. That Respondent shall reimburse to Claimants the expert witness fee in the amount of \$5,000.
4. That Respondent shall reimburse to Claimants their non refundable filing fee in the amount of \$175 (this non refundable fee is retained by NASD Dispute Resolution).
5. That the parties shall bear their own attorneys fees.
6. That all other costs and expenses, except for Fees that are specifically addressed below shall be borne by the respective parties.
7. That any and all claims for relief not specifically addressed herein is denied in its entirety.

#### FEES

Pursuant to the Code, the following fees are assessed:

##### Filing Fees

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

Initial claim filing fee	= \$ 175
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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, the member firm is a party.

Member surcharge	= \$ 800
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1,000

##### Adjournment Fee

Claimants requested an adjournment of the hearing scheduled for June 28 and 29, 2000 and were assessed a postponement fee = \$ 450

##### 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:

Three (3) Pre-hearing sessions with a single arbitrator x \$450	= \$1,350
Pre-hearing conferences:	
April 12, 2000	1 session
June 19, 2000	1 session
March 23, 2001	1 session
One (1) Pre-hearing session with Panel x \$1,200	= \$1,200
Pre-hearing conference:	
October 20, 2000	1 session
Four (4) Hearing sessions x \$1,200	= \$4,800
Hearing Date(s):	
January 17, 2001	2 sessions
<u>March 28, 2001</u>	<u>2 sessions</u>
Total Forum Fees	= \$7,350

The Panel has assessed forum fees in the amount of \$7,350 against Respondent.

Fee Summary

Claimants are assessed the following fees:

Initial Filing Fee*	= \$ 175
<u>Adjournment Fee</u>	<u>= \$ 450</u>
Total Fees	= \$ 625
<u>Less payments</u>	<u>= \$1,825</u>
Refund Due to Claimants	= \$1,200

\* Per Award section above this nonrefundable fee is being reimbursed by Respondent.

Respondent is assessed the following Fees:

Member Fees	= \$2,400
<u>Forum Fees</u>	<u>= \$7,350</u>
Total Fees	= \$9,750
<u>Less payments</u>	<u>= \$2,400</u>
Balance Due NASD Dispute Resolution, Inc.	= \$7,350

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

**Arbitration No. 99-03259**

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### Concurring Arbitrators' Signatures

William J. McDewitt

**William J. McDevitt, Chairperson**  
**Public Arbitrator**

4/30/01  
Signature Date

**G. Rick O'Shea, Panelist**  
**Public Arbitrator**

Signature Date

**Oscar W. Carlson, Jr., Panelist**  
**Non Public Arbitrator**

Signature Date

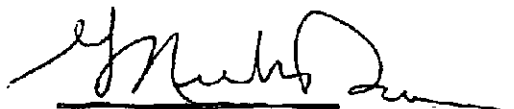
May 2, 2001

Date of Service (For NASD-DR office use only)

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