

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

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In the Matter of the Arbitration Between:

Edward A. Bent, (Claimant) vs. Charles Schwab & Company, Inc. and Tracey L. McMahan, (Respondents).

Case Number: 99-04810

Hearing Site: San Francisco, California.

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**REPRESENTATION OF PARTIES**

Edward A. Bent: Blake Weston, Esq., San Francisco, California.

Charles Schwab & Company, Inc. and Tracey L. McMahan: Sean Meehan, Esq., Charles Schwab & Company, Inc., San Francisco, California.

**CASE INFORMATION**

Statement of Claim filed on or about: October 22, 1999.

Claimant's Amended Complaint and Answer to Counterclaim was filed on or about: February 20, 2000.

Claimant signed the Uniform Submission Agreement: October 23, 1999.

Respondents' Statement of Answer was filed on or about: March 15, 2000.

Charles Schwab & Company, Inc. executed the Uniform Submission Agreement.

Tracey McMahan executed the Uniform Submission Agreement.

Amended Complaint and Answer to Counterclaim was filed on or about: January 20, 2000.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract; fraud; breach of fiduciary duty. Claimant argued that the Respondents failed to allow him to purchase Genentech shares through a directed share program set up for qualified investors in a re-issuance IPO. Claimant had previously held Genentech shares prior to a buyback by the company.

Respondents argued that the Claimant fraudulently misrepresented facts to make appear as if he was qualified to participate in the directed share program. Respondents requested an award of costs and an award of punitive damages. In their Statement of Answer to the Amended Statement of Claim the Respondents withdrew the request for an award of punitive damages and instead requested that the Panel refer Claimant to the NASD for disciplinary action.

### **RELIEF REQUESTED**

**Claimant requested:**

Compensatory Damages	\$55,626
Punitive Damages	Unspecified
Other Monetary/Non-Monetary Relief if any:	Expungement of Bent's CRD record.

**Respondents requested:**

Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief if any:	1) Expungement of Tracey McMahan's CRD record. 2) Referral to District for investigation of Bent's conduct.

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

1. The Claimant is awarded and Respondent shall pay to Claimant the sum of \$6,612.60;
2. Claimant's request for punitive damages is denied;
3. Claimant's request for expungement of his CRD record is denied;
4. Respondents' request for a referral of this matter for disciplinary action is denied;
5. All other claims and counterclaims not specifically addressed above are denied and dismissed;
6. 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 Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 75
Counterclaim filing fee	= \$500

### **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 & Company, Inc. is a party.

Member surcharge	= \$ 300
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1,500

### **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 with a single arbitrator x \$450	= \$450
Pre-hearing conference: September 28, 2000 1 session	
One (1) Pre-hearing session with Panel x \$750	= \$750
Pre-hearing conference: September 18, 2000 1 session	
Three (3) Hearing sessions with Panel x \$750	= \$2,250
Hearing Dates: December 19, 2000 2 sessions	
December 20, 2000 1 session	
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Total Forum Fees	= \$3,450

1. The Panel has assessed 50% of the forum fees to Claimant in the amount of \$1,725.
2. The Panel has assessed 50% of the forum fees to Charles Schwab & Co., Inc. in the amount of \$1,725.

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**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 75
<u>Forum Fees</u>	<u>= \$1,725</u>
Total Fees	= \$1,800
<u>Less payments</u>	<u>= \$ 325</u>
Balance Due NASD Dispute Resolution, Inc.	= \$1,475

2. Respondent Charles Schwab & Company, Inc. is solely liable for:

Counterclaim Fee	= \$ 500
Member Fees	= \$2,400
<u>Forum Fees</u>	<u>= \$1,725</u>
Total Fees	= \$4,625
<u>Less payments</u>	<u>= \$4,400</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 225

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

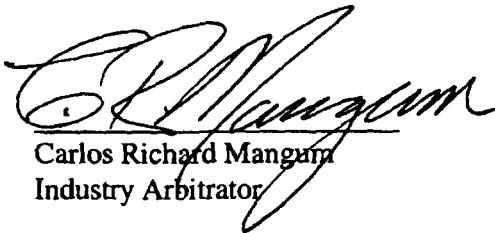
**Concurring Arbitrators' Signature(s)**

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James D. Murray  
Industry Arbitrator, Presiding Chair

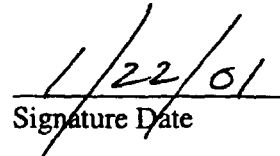
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Signature Date



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Carlos Richard Mangum  
Industry Arbitrator



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Signature Date

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Douglas E. DeTata  
Industry Arbitrator

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Signature Date

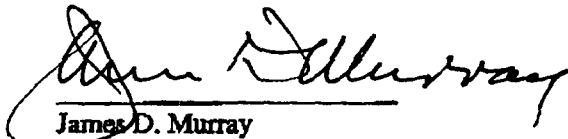
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Concurring Arbitrators' Signature(s)

  
James D. Murray  
Industry Arbitrator, Presiding Chair

1/19/01  
Signature Date

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Carlos Richard Mangum  
Industry Arbitrator

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Signature Date

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Douglas E. DeTata  
Industry Arbitrator

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Signature Date

Date Served:  
JAN 24 2001