

PACIFIC EXCHANGE, INC  
301 Pine Street  
San Francisco, California 94104

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PCX CASE NO. 99-5027

In the Matter of the Arbitration Between:

KIM YOUNG,

Claimant

v

CHARLES SCHWAB & CO., INC.,

Respondent

PCX CASE NO. 99-5027

DECISION

The undersigned Arbitrators, having read and considered the Claim submitted by Claimant Kim Young ("Claimant") on June 8, 1999 and the Answer of Respondent Charles Schwab ("Respondent"); having considered all of the testimony given at the hearing held on September 18-20, 2000; and having considered all papers submitted in this matter, hereby render the following Decision pursuant to Rule 12.29(a) of the Rules of the Pacific Exchange:

#### REPRESENTATION OF PARTIES

FOR CLAIMANT:

James J. Sullivan, Esq.  
*Law Firm of James J. Sullivan*

FOR RESPONDENT:

Gregory Scanlon, Esq.  
*Charles Schwab & Co.*

#### SUMMARY OF FACTS

Kim Young opened an account with Schwab in May 1998. The account application stated that Claimant was a 37-year old student with limited financial resources and no prior trading experience. Claimant subsequently opened a margin and short account with Respondent in July 1998. Claimant successfully traded technology and internet stocks during 1998 by placing her orders electronically. On January 8, 1999, she entered an electronic order to purchase 1,000 shares of Amazon.com. Claimant did not see a confirmation of her order so she re-entered her order believing the first order had not been accepted. Claimant then saw an electronic confirmation of two purchase orders for 1,000 shares each of Amazon.com. Claimant contacted Respondent to inform them that her intent was to place only one, not two, orders of 1,000 shares of Amazon.com. Respondent advised Claimant that both trades were good. Claimant took no action to sell the 1,000 shares she claimed she did not want. The market declined, Claimant was unable to meet her margin call and Respondent liquidated stocks in her account when the equity in Claimant's account fell below the required margin maintenance levels for her account.

### **ISSUES PRESENTED**

Claimant alleges that Respondent breached its fiduciary duty to Claimant and failed to properly supervise its employees by allowing Claimant to place the second order for 1,000 shares of Amazon.com when Respondent knew or should have known that Claimant could not pay for the trade. Claimant also alleges that Respondent failed to properly supervise its employees in that they did not bust the second trade or explicitly tell Claimant to sell the shares she claims she didn't want.

Respondent alleges that after Claimant was advised that both trades were good, she took no action to sell the 1,000 shares she reportedly did not want. In fact, after her initial call to Respondent, Claimant placed several limit orders to sell Amazon shares. The orders did not execute because the price of Amazon never reached the limit price set by Claimant. Several days after the January 8, 1999 orders were executed, Claimant told a representative of Respondent that she did not want to sell the stock, and that she had the funds to meet her margin call and wanted a couple of weeks to pay for the stock. Respondent also alleges Claimant did nothing to mitigate her damages.

### **RELIEF REQUESTED**

Claimant is seeking an award in the amount of her losses of approximately One Hundred Twenty Thousand and 00/100 Dollars (\$120,000.00) with interest and her attorney's fees associated with this arbitration. Claimant also seeks punitive damages.

### **FINDINGS AND AWARD**

**Findings of Fact:** After considering the argument and evidence of both the Claimant and Respondent in this matter, the undersigned Arbitrators make the following findings.

1. Respondent did not breach its fiduciary duties to Claimant or fail to properly supervise its employees at the time of the trades that are the subject of this Arbitration.
2. Respondent did breach its fiduciary duty to Claimant and failed to supervise its employees at the time it permitted Claimant to open her margin account.
3. Claimant failed to mitigate her damages and misled Respondent as to her ability to meet her margin call.

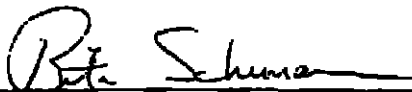
### **AWARD**

<b>Monetary Damages:</b>	Ten Thousand Six Hundred and 00/100 Dollars (\$10,600.00)
<b>Punitive Damages:</b>	Denied
<b>Costs:</b>	Each party will bear its own costs and attorney's fees

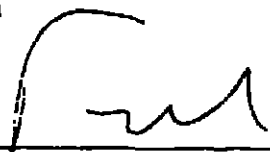
#### **Other Determinations**

1. Respondent shall not reimburse Claimant's non-refundable filing fees.
2. Respondent shall not reimburse Claimant's hearing session deposit.
3. Respondent is assessed and shall pay to the Pacific Exchange forum fees of \$3,100.
4. Claimant is assessed and shall pay to the Pacific Exchange forum fees of \$400.
5. No referral for disciplinary investigation is made.

DATED October 27, 2000

  
Rita Schuman

DATED October 31, 2000

  
Frank Weaver

DATED October 31, 2000

  
Rodger Schuester