

# PACIFIC EXCHANGE

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

Naihong Chen	)	PCX CASE #: 99-S038
	)	
CLAIMANT	)	DECISION IN THE MATTER OF
	)	ARBITRATION BETWEEN
V	)	NAIHONG CHEN AND
	)	CHARLES SCHWAB & CO., INC
Charles Schwab & Co., Inc.	)	
	)	
RESPONDENT	)	

The undersigned Arbitrator, having read and considered the Claim submitted by Claimant Naihong Chen, (sometimes "Chen") on August 27, 1999, and the Answer of Respondent Charles Schwab & Co., Inc (sometimes "Schwab"), hereby renders the following Decision pursuant to Rule 12.29(a) of the Pacific Exchange.

## REPRESENTATION OF PARTIES

Of Claimant: Naihong Chen - Downey, CA  
*In propria persons*

Of Respondent: Mauricio S. Beugelmans, Esq.  
*Charles Schwab & Co., Inc. - San Francisco, CA*

## SUMMARY OF ISSUES

On or about July 16, 1997, Claimant opened an online brokerage account with Schwab by signing an e.Schwab Account Application ("the Application"). Between September 1997 and August 1998, Claimant purchased a total of 2,200 shares of Brilliance China Automotive ("CBA") for approximately \$21,000.00. Claimant alleges that on August 13, 1998, he sold his 2,200 shares of CBA based on allegedly erroneous information Schwab listed on its website. Claimant identified the alleged errors: (1) Schwab's website incorrectly posted that CBA's Earnings Per Share ("EPS") was down from \$1.20 to "0.00;" and (2) Schwab's website incorrectly posted that the original CBA Price-To-Earnings ("P/E") was down from 5 to 0, indicating that CBA did not declare any profits in 1997.

Claimant alleges that Respondent's negligent posting of the erroneous EPS and P/E information on its website caused him to sell his CBA stock, resulting in a loss to him of \$8,053.69. He sold his 2,200 shares for a total of \$13,133.56. Claimant wrote a letter to Respondent on August 14, 1998, the day following the trade, and made a formal complaint. Claimant received a letter from Respondent dated September 1, 1998 stating that Respondent was not responsible for the loss.

Respondent alleges that when Claimant signed and completed an e.Schwab Account Application to open a brokerage account, Claimant was bound by its terms which state that he agreed: "to read and be bound by the terms of the e.Schwab Investment Account Agreement and the Schwab Brokerage Account agreement..." (Exhibits A&B to the Statement of Answer.) Respondent further alleges Claimant agreed to be solely responsible for his investment decisions, and that he failed to mitigate his alleged damages. Respondent asserts that according to the "Use Agreement," it is not responsible for losses caused directly or indirectly by conditions beyond its control, interruptions of communications, data processing services, disruptions or

# PACIFIC EXCHANGE

ARBITRATION

Chen v. Charles Schwab & Co., Inc.

PCX Case #: 99- S038

Page 2

in orderly trading on any exchange or market.

Respondent relies on *Caspi v. Microsoft*, 732 A.2d 528 (New Jersey 1999) for the proposition that: "customers are bound to a contract created online because they clicked the agreement with its terms and were able to scroll down to read the terms."

Finally, Respondent asserts that the Online Use Agreement states "Neither Schwab nor the providers (1) guarantee the accuracy, timeliness, completeness, or correct sequencing of the information, or (2) warrant any results from the use of the information. In no event will Schwab, the providers or other persons transmitting the information be liable to you or to anyone else for any consequential, incidental, special or indirect damages..." (Exhibit D to the Statement of Answer)

## RELIEF REQUESTED

### A. By Claimant:

Claimant requests reimbursement for losses totaling \$8,053.69, plus filing fees (\$75.00), the hearing session deposit (\$75.00) and consultant fees (\$125.00).

### B. By Respondent:

Respondent requests that Claimant's prayer be denied in its entirety. It further requests that Claimant's prayer for the reimbursement Consultant fees of \$125.00 be denied, as such fees are not allowed under governing California law.

Respondent also requests that it be awarded costs and fees for defending the Claim.


## DECISION

After reviewing the submissions of both the Claimant and Respondent in this matter, the undersigned Arbitrator makes this final determination and decision of the issues presented, as set forth below:

1. Claimant's Claim is denied. Claimant executed a valid waiver when he agreed to the Online Use Agreement in which he agreed to hold Schwab harmless for inaccurate, untimely, incorrect or incomplete information on its website.
2. Respondent's Counter-Claim for defending the case is also denied.
3. The parties shall bear their own costs of arbitration, including any and all filing fees and member surcharge fees.

Date:

2/5/2000

  
Gloria Edmonson