

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant/Counterrespondent  
Charles Schwab & Co., Inc.

Case Number: 02-05863

Name of the Respondent/Counterclaimant  
Terry M. Myers

Hearing Site: Chicago, Illinois

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Type of Controversy: Member Firm v. Customer

**REPRESENTATION OF PARTIES**

Claimant/Counterrespondent Charles Schwab & Co., Inc. ("Charles Schwab") was represented by Brandon K. Hemley, Esq. in-house counsel for Charles Schwab located in San Francisco, California.

Respondent/Counterclaimant Terry M. Myers ("Myers") was *pro se*.

**CASE INFORMATION**

Statement of Claim filed on or about: October 01, 2002.

Charles Schwab signed the Uniform Submission Agreement: September 27, 2002.

Statement of Answer filed by Myers on or about: October 29, 2002.

Myers' Counterclaim filed on or about: October 29, 2002.

Myers signed the Uniform Submission Agreement: October 29, 2002.

Myer's Motion of Summary Judgment on First Counterclaim filed on or about: July 29, 2003.

Charles Schwab's Opposition to Myer's Motion of Summary Judgment on First Counterclaim filed on or about: July 29, 2003.

Myers' Motion to Amend Counterclaim filed on or about: October 14, 2003.

Myers' Motion to Dismiss filed on or about: October 14, 2003.

Myers' Second Motion to Amend Counterclaim and Motion to Dismiss filed on or about: October 29, 2003.

Charles Schwab's Opposition to Myer's Second Motion to Amend Counterclaim and Motion to Dismiss filed on or about: October 29, 2003.

Myers' Posthearing Submissions filed on or about: November 7, 2003.

Charles Schwab's Response to Myers' Post-Hearing Submission filed on or about: November 11, 2003.

**CASE SUMMARY**

Charles Schwab asserted the following causes of action: Failure to pay debit balance.

The causes of action relate to the transfer of funds in Myer's account.

Unless specifically admitted in his Answer, Myers denied the allegations made in the Statement of Claim and asserted the following defenses:

Myers asserted the following causes of action: Breach of Contract; Breach of Fiduciary Duty; Fraud; and Lost Opportunity.

Unless specifically admitted in its Answer to Counterclaim, Charles Schwab denied the allegations made in the Statement of Claim and asserted the following defenses:

**RELIEF REQUESTED**

Charles Schwab requested:

Compensatory Damages	\$ 15,414.57
Punitive Damages	unspecified
Interest	\$ 1,050.00
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	any relief the panel deems just and equitable

Myers requested:

Compensatory Damages	\$600,000.00
Attorneys' Fees	\$ 3,000.00
Other Costs	\$ 1,575.00
Other Monetary/Non-Monetary Relief if any:	denial and dismissal of claims

**OTHER ISSUES CONSIDERED AND DECIDED**

In an order dated August 25, 2003 the panel denied Myer's Motion for Summary Judgment on the First Counterclaim.

At hearing, Myers made a motion to postpone. The panel overruled the motion and the matter proceeded.

Myers' Motion for Leave to Amend Counterclaim was denied. As a consequence, Myers was barred from presenting evidence on the claims asserted in his amended counterclaim.

### 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. Terry M. Myers is liable for and shall pay to Charles Schwab & Co., Inc. the sum of \$15,414.57 as compensatory damages, plus interest on this sum in the amount of 7.25% per annum to accrue from July 1, 2002 and ceasing to accrue until payment in full of the principal compensatory damages.
2. Terry M. Myers is liable for and shall pay to Charles Schwab & Co., Inc. the sum of \$15,414.57 as punitive damages. The panel found Terry M. Myers committed the act of conversion, and, therefore, makes a specific finding that Terry M. Myers committed fraud upon Charles Schwab & Co., Inc.; thereby justifying an award of punitive damages against Terry M. Myers.
3. Terry M. Myers is liable for and shall pay to Charles Schwab & Co., Inc. the sum of \$3,000.00 as attorney's fees. The panel finds authority to award attorney's fees in the "Cost of Collection" section of the contract existing between the parties.
4. Terry M. Myers is liable for and shall pay to Charles Schwab & Co., Inc. the sum of \$1,475.00 as costs.
5. The Counterclaim asserted by Terry M. Myer against Charles Schwab & Co., Inc. is denied and dismissed.
6. Unless enumerated herein, parties shall bear their own costs.
7. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 750.00
Counterclaim filing fee	= \$ 375.00

#### 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. Accordingly, Charles Schwab is assessed the following fees:

Member surcharge	= \$ 425.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00
Total	= \$5,175.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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 at \$1,200.00 = \$1,200.00  
Pre-hearing conference: June 5, 2003 1 session

Two (2) Hearing sessions at \$1,200.00 = \$2,400.00  
Hearing Date: November 3, 2003 2 sessions

Total Forum Fees = \$3,600.00

The Panel has assessed \$3,600.00 of the forum fees to Terry M. Myers.

**FEE SUMMARY**

1. Charles Schwab & Co., Inc. is solely liable for:

Initial Filing Fee	= \$ 750.00
<u>Member Fees</u>	= \$ 5,175.00
<u>Total Fees</u>	= \$ 5,925.00
<u>Less payments</u>	= \$ 8,050.00
Refund Due from NASD Dispute Resolution	= \$ 2125.00

2. Terry M. Myers is solely liable for:

Counterclaim Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 3,600.00
<u>Total Fees</u>	= \$ 3,975.00
<u>Less payments</u>	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 2,400.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Robert L. Agosto, Esq.	-	Public Arbitrator, Presiding Chairperson
Michael F. Jordan, Esq.	-	Public Arbitrator
Thomas F. Ryan	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Robert L. Agosto, Esq.  
Public Arbitrator, Presiding Chairperson

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

/s/ Michael F. Jordan

01/05/04

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Michael F. Jordan, Esq.  
Public Arbitrator

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

/s/ Thomas F. Ryan

02/29/04 [sic]

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Thomas F. Ryan  
Non-Public Arbitrator

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Signature Date

01/30/04

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Date of Service (For NASD Dispute Resolution office use only)

**ARBITRATION PANEL**

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Michael F. Jordan, Esq.	-	Public Arbitrator
Thomas F. Ryan	-	Non-Public Arbitrator

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\_\_\_\_\_  
Robert L. Agosto, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
Michael F. Jordan, Esq.  
Public Arbitrator

January 5, 2009  
Signature Date

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Thomas F. Ryan  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

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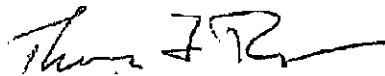
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Robert L. Agosto, Esq.  
Public Arbitrator, Presiding Chairperson

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

Michael F. Jordan, Esq.  
Public Arbitrator

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



Thomas F. Ryan  
Non-Public Arbitrator

2-28-2009  
\_\_\_\_\_  
Signature Date

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Date of Service (For NASD Dispute Resolution office use only)