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

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In the Matter of the Arbitration Between:

Names of the Claimants

Amy Wellman and Harold Wellman, Jr., individually  
and as Personal Representative of the Estate of  
Harold Wellman, Sr.

Case Number: 03-05363

Names of the Respondents

Charles Schwab & Co., Inc.  
Great-West Life Insurance and Annuity Company

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member and Non-Member.

**REPRESENTATION OF PARTIES**

For Amy Wellman and Harold Wellman, Jr., individually and as Personal Representative of the Estate of Harold Wellman, Sr., hereinafter collectively referred to as "Claimants": Marc S. Dobin, Esq. and Brian Buckstein, Esq., Dobin & Jenks, LLP, Jupiter, Florida.

For Respondent Charles Schwab & Co., Inc. ("Schwab"): Katherine Nathan, Office of Corporate Counsel, Charles Schwab & Co., Inc., San Francisco, California.

For Respondent Great-West Life Insurance and Annuity Company ("Great-West"): Stephan Voudris, Esq., Jorden Burt, LLP, Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: July 10, 2003.

Claimants signed the Uniform Submission Agreement: June 14, 2003.

Statement of Answer filed by Respondent Schwab on or about: September 22, 2003.

Respondent Schwab signed the Uniform Submission Agreement: September 22, 2003.

Amended Statement of Claim filed by Claimants on or about: July 8, 2004.

Motion to Dismiss and Affirmative Defenses to Amended Statement of Claim filed by Respondent Great-West on or about: August 26, 2004.

Reply to Respondent Great-West's Motion to Dismiss filed by Claimants on or about: September 22, 2004.

Respondent Great-West did not file a signed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) negligence; 2) breach of fiduciary duty; 3) unsuitability; and, 4) failure to supervise. The causes of action relate to the purchase of a fixed annuity in Claimants' account.

Unless specifically admitted in their Answer, Respondent Schwab denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Motion to Dismiss and Affirmative Defenses to the Amended Statement of Claim, Respondent Great-West denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$270,000.00 and costs.

Respondent Schwab requested that the Statement of Claim be dismissed in its entirety, with costs assessed against Claimants.

Respondent Great-West did not delineate a relief request.

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

On or about June 17, 2004, the Panel issued an Order that granted Claimants' Motion to Amend the Statement of Claim in order to add Respondent Great-West as a party.

Respondent Great-West did not file with NASD Dispute Resolution a properly executed submission to arbitration, however, Respondent Great-West is not a member of NASD and is not required to submit to the jurisdiction of NASD.

On or about February 20, 2005, the Panel issued an Order that granted, without prejudice, Respondent Great-West's Motion to Dismiss.

During the final hearing for this matter, Respondent Schwab made an ore tenus motion for the expungement of the NASD Central Registration Depository (the "CRD") record of non-party broker Robert Willingham, Jr. The Panel denied this motion.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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:

Respondent Schwab is found not liable on all Claimants' claims and this matter is dismissed in its entirety, with prejudice.

Any and all claims for relief not specifically addressed herein, are denied.

**FEES**

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 300.00

**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, Respondent Schwab is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Total Member Fees = \$5,200.00

**Adjournment Fees**

No requests for adjournments were filed in this matter for which fees were assessed.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No cancellation fees were assessed in this matter.

**Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

**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:

Three (3) Pre-hearing sessions with the Panel @ \$1,125.00 = \$3,375.00

Pre-hearing conferences: December 10, 2003 1 session  
October 7, 2004 1 session  
February 18, 2005 1 session

Three (3) Hearing sessions with the Panel @ \$1,125.00 = \$3,375.00

Hearing Dates: October 10, 2005 2 sessions  
October 11, 2005 1 session

Total Forum Fees = \$6,750.00

The Panel has assessed \$3,375.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$3,375.00 of the forum fees to Respondent Schwab.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 3,375.00</u>
Total Fees	= \$ 3,675.00
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,250.00

Respondent Schwab is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	<u>= \$ 3,375.00</u>
Total Fees	= \$ 8,575.00
<u>Less payments</u>	<u>= \$ 6,900.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,675.00

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

**ARBITRATION PANEL**

<i>Anthony S. Paetro, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Abe Mintz</i>	-	<i>Public Arbitrator</i>
<i>Ned B. Young</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/  
Anthony S. Paetro, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
10/11/05  
Signature Date

NASD Dispute Resolution

Arbitration No.03-05363

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/s/

Abe Mintz

Public Arbitrator

10/11/05

Signature Date

/s/

Ned B. Young

Non-Public Arbitrator

10/12/05

Signature Date

10/12/05

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

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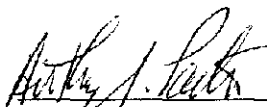
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Abe Mintz	-	Public Arbitrator
Ned B. Young	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**




Anthony S. Paetro, Esq.  
Public Arbitrator, Presiding Chairperson

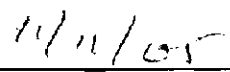
October 11, 2005  
Signature Date

NASD Dispute Resolution

Arbitration No.03-05363

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Abe Mintz  
Public Arbitrator

  
Signature Date

Ned B. Young  
Non-Public Arbitrator

Signature Date

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

Oct. 12. 2005 11:25AM

FROM :NASD

No.6377 P. 6

Oct. 12 2005 10:03AM P5/6

NASD Dispute Resolution

Arbitration No.03-05363

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Abe Mintz

Public Arbitrator

Signature Date

Ned B. Young

Ned B. Young

Non-Public Arbitrator

10-12-05

Signature Date

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