

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jack Burris, trustee of Jack Burris IRA and Mary Burris, Claimants v. Charles Schwab & Co., Inc., Mark D. Babakan and Randall L. Klassen, Respondents

Case Number: 04-02122

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimants:

Elizabeth Lowery, Esq.
Fields, Fehn & Sherwin
Los Angeles, California

For Respondents:

Sean B. Meehan, Esq.
Charles Schwab & Co., Inc.
San Francisco, California

CASE INFORMATION

Statement of Claim filed: March 23, 2004

Claimant Jack Burris, trustee of Jack Burris IRA's Uniform Submission Agreement signed:
March 7, 2004

Claimant Mary Burris' Uniform Submission Agreement signed: March 9, 2004

Joint Statement of Answer filed by Respondents: June 9, 2004

Respondent Charles Schwab & Co., Inc.'s Uniform Submission Agreement signed:
June 9, 2004

Respondent Mark D. Babakan's Uniform Submission Agreement signed: May 20, 2004

Respondent Randall L. Klassen's Uniform Submission Agreement signed: May 7, 2004

CASE SUMMARY

Claimants alleged unsuitability, misrepresentation and omission of material facts, and breach of fiduciary duty, involving securities in NorthWestern Corporation.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested \$95,152.00 in compensatory damages, unspecified punitive damages, 8.10% rate of return on money invested in NorthWestern, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and expungement of Respondents Mark D. Babakan and Randall L. Klassen's CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

On May 11, 2004, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

The parties 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, testimony, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondents Charles Schwab & Co., Inc. and Mark D. Babakan are jointly and severally liable to and shall pay Claimants the sum of \$108,473.00 in compensatory damages.
- 2) Respondents Charles Schwab & Co., Inc. and Mark D. Babakan are jointly and severally liable to and shall pay Claimants interest at the rate of 10% per annum on \$108,473.00 from the date of service of the Award until the date that payment of the Award is made in full.
- 3) Respondents Charles Schwab & Co., Inc. and Mark D. Babakan are jointly and severally liable to and shall pay Claimants the sum of \$225.00 for reimbursement of the initial claim filing fee.
- 4) Respondent Randall L. Klassen is dismissed with prejudice.
- 5) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Randall L. Klassen's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Randall L. Klassen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 6) Except as awarded above, the parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 225.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Charles Schwab & Co., Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

1 Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: December 14, 2004 1 session	
4 Hearing sessions @ \$750.00/session	= \$ 3,000.00
Hearings: January 11, 2005 2 sessions	
January 12, 2005 2 sessions	

Total Forum Fees	= \$ 3,450.00
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The Panel assessed \$3,450.00 of the forum fees jointly and severally to Respondents Charles Schwab & Co., Inc. and Mark D. Babakan.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 225.00
<u>Less payments</u>	= \$(975.00)
Refund Due Claimants	= \$(750.00)

2. Respondent Charles Schwab & Co., Inc. is charged with the following fees and costs:

Member Fees	= \$ 3,550.00
<u>Less payments</u>	= \$(3,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Charles Schwab & Co., Inc. and Mark D. Babakan are charged jointly and severally with the following fees and costs:

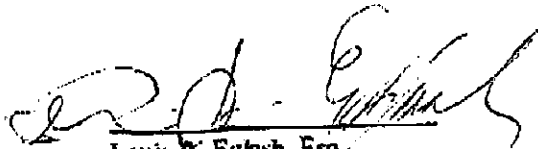
Forum Fees	= \$ 3,450.00
<u>Less payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 3,450.00

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

ARBITRATION PANEL

Louis R. Eglash, Esq.	•	Public Arbitrator, Presiding Chair
Robert S. Granas	•	Public Arbitrator
Daniel R. Brush, CPA, CFP	•	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Louis R. Eglash, Esq.
Chair, Public Arbitrator

1-13-05
Signature Date

Robert S. Granas
Public Arbitrator

Signature Date

Daniel R. Brush, CPA, CFP
Non-Public Arbitrator

Signature Date

1/13/05
Date of Service

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Robert S. Granas	-	Public Arbitrator
Daniel R. Brush, CPA, CFP	-	Non-Public Arbitrator

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Non-Public Arbitrator

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Louis R. Eglash, Esq.
Chair, Public Arbitrator

Signature Date

Robert S. Granas
Robert S. Granas
Public Arbitrator

January 13, 2005
Signature Date

Daniel R. Brush, CPA, CFP
Non-Public Arbitrator

Signature Date

1/18/05
Date of Service