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

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In the Matter of the Arbitration Between:

Names of the Claimants

LaTonya McLaughlin  
The Estate of Maurice R. McLaughlin

Case Number: 04-03425

Name of the Respondent

Charles Schwab & Co., Inc.

Hearing Site: Memphis, TN

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For LaTonya McLaughlin and The Estate of Maurice R. McLaughlin, hereinafter collectively referred to as "Claimants": John T. Wilkinson, III, Esq., Memphis, TN

For Charles Schwab & Co., Inc. ("Schwab"), hereinafter referred to as "Respondent": Geoffrey Moore, Corporate Counsel, Schwab, San Francisco, CA and Michael Richards, Esq., Baker Donelson, Memphis, TN.

**CASE INFORMATION**

Statement of Claim filed on or about: May 10, 2004.

Claimants signed the Uniform Submission Agreement: May 3, 2004.

Statement of Answer filed by Respondent on or about: July 14, 2004.

Respondent signed the Uniform Submission Agreement: July 9, 2004.

Claimants' Reply to Statement of Answer filed on or about: July 16, 2004.

**CASE SUMMARY**

Claimants asserted the causes of action of breach of contract and breach of fiduciary duty. The causes of action relate to the closure of Claimants' IRA accounts and distribution of the proceeds to a third party.

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

**RELIEF REQUESTED**

Claimants requested compensatory damages of \$73,571.71, pre-judgment interest, and costs.

Respondent requested dismissal of the Statement of Claim, costs, and such other relief as provided by law.

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

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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the undersigned arbitrators (the "Panel") have decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable and shall pay to Claimant LaTonya McLaughlin compensatory damages in the sum of \$43,785.86, inclusive of pre-judgment interest, less any restitution paid to Claimant LaTonya McLaughlin, individually, through the date of the Award.

The claims for relief of the Estate of Maurice R. McLaughlin are dismissed, 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.

The Panel waived assessment of the initial claim filing fee.

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Schwab is a member firm and a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were granted during these proceedings 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 three-day cancellation fees were assessed during these proceedings.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were assessed during these proceedings.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$750.00 = \$ 750.00

Pre-hearing conference: October 4, 2004 1 session

One (1) Hearing session @ \$750.00.00 = \$ 750.00

Hearing Date: December 7, 2004 1 session

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Total Forum Fees = \$1,500.00

The Panel has assessed the total forum fees of \$1,500.00 to Respondent.

**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**

Respondent is solely liable for:

Member Fees = \$ 3,550.00

Forum Fees = \$ 1,500.00

Total Fees = \$ 5,050.00

Less payments = \$ 3,550.00

Balance Due NASD Dispute Resolution = \$ 1,500.00

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

**ARBITRATION PANEL**

Fred M. Acuff, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Lawrence W. Kern, Esq.	-	Public Arbitrator
Eugene R. Katz	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Fred M. Acuff, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Lawrence W. Kern, Esq.  
Public Arbitrator

Signature Date

/s/  
Eugene R. Katz  
Non-Public Arbitrator

Signature Date

December 10, 2004  
Date of Service (For NASD Dispute Resolution use only)

DEC. 10. 2004 8:35AM NASD BOCA RATON

NO. 459 P. 5

NASD Dispute Resolution

Arbitration No. 04-03425

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**Concurring Arbitrators' Signatures**



Fred M. Acuff, Jr., Esq.

Public Arbitrator, Presiding Chairperson

12-10-04

Signature Date

\_\_\_\_\_  
Lawrence W. Kern, Esq.

Public Arbitrator

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

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Eugene R. Katz

Non-Public Arbitrator

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Signature Date

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