

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Raymond N. Mitchell, Jr.

v.

04-04703

Denver, Colorado

Respondent

Charles Schwab & Company, Inc.

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Nature of Dispute: Associated Person v. Member

**REPRESENTATION OF PARTIES**

Raymond N. Mitchell, Jr. ("**Claimant**") was represented by Bruce J. Kaye, Esq., of Kaye & Bush, LLC, Denver, Colorado.

Charles Schwab & Company, Inc. ("**Respondent**") was represented by Janet T. Epstein, Esq., of Charles Schwab & Company, Inc., San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 29, 2004. The Submission Agreement of Claimant was signed on or about June 29, 2004.

The Statement of Answer and Motion to Dismiss was filed by Respondent, Charles Schwab & Company, Inc., on or about August 27, 2004. The Submission Agreement of Respondent, Charles Schwab & Company, Inc., was signed on or about August 25, 2004.

Claimant filed a Motion to Strike Respondent's Motion to Dismiss on or about September 16, 2004.

**CASE SUMMARY**

Claimant asserted causes of action including the following: breach of contract and promissory estoppel. The causes of action related to Claimant's allegation that Respondent violated expressed and/or implied terms of its employment contract with Claimant by terminating him without just cause.

Respondent denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimant violated Respondent's Safety & Security Policy; Claimant was an at-will employee and could be terminated for any reason; and the Claimant failed to state a claim upon which Respondent is responsible.

### **RELIEF REQUESTED**

Claimant requested an award of \$2,500,000 in actual damages, punitive damages, interest, attorneys' fees, costs and reinstatement of Claimant to his former position with all applicable wage and benefit increases.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

On or about October 4, 2004, Respondent withdrew its Motion to Dismiss.

Claimant filed a post-hearing Request for Specific Finding of Fact and Supplemental Authority for the panel's consideration on or about October 18, 2005. Respondent filed a post-hearing brief with supporting case law on or about October 18, 2005.

All parties agreed to the panel's composition.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, Charles Schwab & Company, Inc., is liable for and shall pay to Claimant, Raymond N. Mitchell, Jr., the sum of Three Hundred Fifty Thousand Dollars and No Cents (\$350,000.00) in compensatory damages;
2. Respondent, Charles Schwab & Company, Inc., is liable for and shall pay to Claimant, Raymond N. Mitchell, Jr., costs of Five Hundred Dollars and No Cents (\$500.00), reflecting the reimbursement of the filing fee paid by Claimant in this matter;
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and

4. Other than the Forum Fees noted below, or awarded above, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 500

#### **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. In this matter, the member firm is Charles Schwab & Company, Inc.

Member surcharge	= \$ 2,800
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 5,000

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$ 1,200 = \$ 1,200

Pre-hearing conference: November 8, 2004 1 session

Six (6) Hearing sessions with Panel x \$ 1,200 = \$ 7,200

Hearing Dates:	October 11, 2005	2 sessions
	October 12, 2005	2 sessions
	October 13, 2005	2 sessions

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Total Forum Fees = \$ 8,400

The Arbitration Panel has assessed \$ 8,400 of the forum fees to Charles Schwab & Company, Inc.

**FEE SUMMARY**

Claimant, Raymond N. Mitchell, Jr., is liable for:

<u>Initial Filing Fee</u>	= \$ 500
<u>Total Fees</u>	= \$ 500
<u>Less payments</u>	= \$ 1,700
<u>Balance Refunded By NASD Dispute Resolution</u>	= \$ 1,200

Respondent, Charles Schwab & Company, Inc., is liable for:

<u>Member Fees</u>	= \$ 8,550
<u>Forum Fees</u>	= \$ 8,400
<u>Total Fees</u>	= \$ 16,950
<u>Less payments</u>	= \$ 12,100
<u>Balance Due NASD Dispute Resolution</u>	= \$ 4,850

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

**ARBITRATION PANEL**

James J. Moylan, Esq. - Non-Public Arbitrator, Presiding Chair  
Bradford J. Lam, Esq. - Public Arbitrator  
Carl G. Mohr - Public Arbitrator

Concurring Arbitrators:

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James J. Moylan, Esq.  
Non-Public Arbitrator, Presiding Chair

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Signature Date

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Bradford J. Lam, Esq.  
Public Arbitrator

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Signature Date

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Carl G. Mohr  
Public Arbitrator

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Signature Date

10/27/05  
Date of Service (NASD use only)

**ARBITRATION PANEL**

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Bradford J. Lam, Esq. - Public Arbitrator  
Carl G. Mohr - Public Arbitrator

Concurring Arbitrators:

  
James J. Moylan, Esq.  
Non-Public Arbitrator, Presiding Chair

Bradford J. Lam, Esq.  
Public Arbitrator

Carl G. Mohr  
Public Arbitrator

10/29/05  
Date of Service (NASD use only)

10/26/05  
Signature Date

Signature Date

Signature Date

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Non-Public Arbitrator, Presiding Chair

Signature Date

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Public Arbitrator

Signature Date

Carl G. Mohr  
Public Arbitrator

Signature Date

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