

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

David D. Barrett, individually and on behalf
of his individual retirement accounts

v.

04-07074
Denver, Colorado

Respondents

Investment Management Consultants, LTD
Charles Schwab & Company, Inc.,
and Richard L. Behr, Jr.

and

Cross-Claimant

Charles Schwab & Company, Inc.

v.

Cross-Respondents

Investment Management Consultants, LTD
and Richard L. Behr, Jr.

NATURE OF DISPUTE

Customer v. Non-Member with a Contract to Arbitrate, Member Firm
and Associated Person

Member Firm v. Non-Member with a Contract to Arbitrate Firm and Associated Person

REPRESENTATION OF PARTIES

David D. Barrett, individually and on behalf of his individual retirement accounts ("**Claimant**") was represented by Alan C. Friedberg, Esq., of Pendelton, Friedberg, Wilson & Hennessey, P.C., Denver, Colorado.

Investment Management Consultants, LTD ("**IMC**") and Richard L. Behr, Jr. ("**Behr**"), were represented by C. Garold Sims, Esq., and Frank Suyat, Esq., of Sims & Boster, Denver, Colorado.

Charles Schwab & Company, Inc. ("**Charles Schwab**") was represented by Brandon K. Hemley, Esq., of Charles Schwab & Company, Inc., San Francisco, California.

CASE INFORMATION

The Statement of Claim was filed on or about October 5, 2004. The Submission Agreement of Claimant was signed on or about October 4, 2004.

A Statement of Answer was filed jointly by IMC and Behr on or about December 10, 2004. The Submission Agreement of IMC was signed on or about October 14, 2004. The Submission Agreement of Behr was signed on or about November 23, 2004.

A Statement of Answer, Motion to Dismiss and Crossclaim was filed by Charles Schwab on or about December 9, 2004. The Submission Agreement of Respondent, Charles Schwab & Company, Inc., was signed on or about December 9, 2004.

IMC and Behr filed an Answer to Charles Schwab's Crossclaim on or about December 22, 2004.

Claimant filed a Response to Charles Schwab's Motion to Dismiss on or about January 21, 2005.

Charles Schwab filed a Reply to Claimant's Opposition to its Motion to Dismiss on or about June 6, 2005.

CASE SUMMARY

Claimant asserted causes of action including the following: violation of Colorado Securities Act, breach of fiduciary duty and breach of contract. Claimant alleged that the investment recommendations made by IMC and Behr were unsuitable and contrary to his investment objectives. Claimant alleged that IMC and Behr recommended he invest the proceeds from his retirement accounts into four portfolio managers specializing in various mid-cap value and growth securities: Mastrapasqua Asset Management; King Investment Advisors; Navellier & Associates; Inc., and Grady & Company. Claimant stated that this recommendation was overly concentrated and lacked diversification, causing him to suffer financial losses. Claimant further alleged that Charles Schwab's relationship with IMC and Behr was not properly disclosed, asserting that IMC's inclusion on a Schwab list of approved investment advisors was based solely on compensation to be paid Schwab for all accounts opened under the Schwab Advisor Network as opposed to the investment advisors' performance.

IMC and Behr denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's claims are barred, in whole or in part, by Claimant's own authorization or ratification of the recommendation and actions of IMC and Behr; Claimant's claims are barred, in whole or in part, because Claimant's losses were caused

by intervening events over which IMC and Behr had no control and for which they are not responsible; Claimant is estopped from asserting claims against IMC and Behr by virtue of his conduct and dealing with IMC and Behr. As a result of Claimant's failure to notify Behr promptly after receipt of written confirmations, monthly statements and other documents evidencing the account status or potentially non-suitable transaction or position acquired, Claimant is barred from recovering under the doctrines of estoppel, waiver and laches, because IMC and Behr relied upon Claimant's silence and acquiescence as to his investment objective; Claimant's claims are barred, in whole or in part, by Claimant's own contributory negligence or comparative fault; and Claimant was aware from the outset of the potential risks of loss associated with investing in securities, and he voluntarily and knowingly assumed such risks.

Charles Schwab denied the allegations set forth in the Statement of Claim and asserted affirmative defenses of failure to state a cause of action, comparative negligence, assumption of risk, ratification, waiver, estoppel and failure to mitigate damages.

In Charles Schwab's Cross claim it asserted that IMC, through its President, Richard L. Behr, Jr., entered into an Investment Manager Service Agreement ("IMSA") and a Schwab Advisor Source Participation Agreement ("Participation Agreement"). Schwab alleged that both the IMSA and Participation Agreement contained arbitration provisions that agreed to indemnify Schwab and hold Schwab harmless from and against all claims, actions, costs and liabilities, including reasonable attorneys' fees arising out of or relating to: Schwab's acting in accordance with any instruction given by IMC; the performance or nonperformance of IMC's services to a Client; and any dispute between IMC and any Client, including disputes concerning fees, trading instructions, investment decisions and investment advice.

IMC and Behr denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: Schwab failed to state a claim upon which relief can be granted; Schwab's cross claim is barred, in whole or in part, by the doctrines of estoppel, laches, waiver, accord and satisfaction, *in pari delicto* and unclean hands; Schwab's cross claim is barred, in whole or in part, by the acts and omissions of Schwab and is not attributable to IMC and Behr; Schwab's cross claim is barred, in whole or in part, by Schwab's own contributory negligence or comparative fault; and Schwab's cross claim is barred, in whole or in part, as there is a lack of consideration.

RELIEF REQUESTED

Claimant requested an award of \$344,621 in compensatory damages, plus punitive damages, interest, costs, attorneys' fees and any other relief the panel deemed just and equitable.

IMC and Behr requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition IMC and Behr requested an expungement of all references to the above-captioned arbitration from their registration records maintained by the NASD Central Registration Depository ("CRD").

Charles Schwab requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees. In its cross claim, Charles Schwab request that the panel declare that IMC shall indemnify Charles Schwab of any damages found against it pursuant to the IMSA.

OTHER ISSUES CONSIDERED & DECIDED

On or about June 10, 2005, the panel denied Charles Schwab's Motion to Dismiss.

On or about November 23, 2005, NASD Dispute Resolution received notification that Claimant and Charles Schwab had reached a settlement and resolved all claims between them. Charles Schwab also dismissed its Crossclaim for indemnification against Respondents IMC and Behr. Accordingly, the arbitration panel did not adjudicate and claims asserted by or against Charles Schwab.

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, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Investment Management Consultants, LTD, and Richard L. Behr, are jointly and severally liable for and shall pay to Claimant, David D. Barrett, individually and on behalf of his individual retirement accounts, the sum of Two Hundred Twenty One Thousand One Hundred Twenty One Dollars and No Cents (\$221,121.00) in compensatory damages;
2. Respondents, Investment Management Consultants, LTD, and Richard L. Behr, are jointly and severally liable for and shall pay to Claimant, David D. Barrett, interest on the above stated sum at the rate of 8% per annum from and including the date of service of the Award through and including the date this Award is paid in full;

3. Respondents, Investment Management Consultants, LTD, and Richard L. Behr, are jointly and severally liable for and shall pay to Claimant, David D. Barrett, attorneys' fees in the amount of One Hundred Eighty Seven Thousand Dollars and No Cents (187,000.00) pursuant C.R.S. 13-22-221;
4. Respondent, Investment Management Consultants, LTD, shall disclose its financial relationship with Charles Schwab and Company, Inc., to all current and future clients/customers; and
5. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, including punitive damages or expungement, are denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 300
Crossclaim filing fee	= \$ 1,000

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	= \$ 1,700
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 2,750

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 \$ 450	= \$ 450
---	----------

Pre-hearing conference: September 19, 2005 1 session

Two (2) Pre-hearing sessions with Panel x \$ 1,125 = \$ 2,250

Pre-hearing conferences: April 11, 2005 1 session
June 7, 2005 1 session

Twelve (12) Hearing sessions with Panel x \$ 1,125 = \$ 13,500

Hearing Dates: November 29, 2005 2 sessions
July 24, 2006 2 sessions
July 25, 2006 2 sessions
July 26, 2006 2 sessions
July 27, 2006 2 sessions
July 28, 2006 2 sessions

Total Forum Fees = \$ 16,200

The Arbitration Panel has assessed \$ 8,100 of the forum fees to David D. Barrett, individually and on behalf of his individual retirement accounts.

The Arbitration Panel has assessed \$ 8,100 of the forum fees jointly and severally to Investment Management Consultants, LTD, and Richard L. Behr, Jr.

FEE SUMMARY

Claimant, David D. Barrett, individually and on behalf of his individual retirement accounts, is liable for:

Initial Filing Fee	= \$ 300
Forum Fees	= \$ 8,100
Total Fees	= \$ 8,400
Less payments	= \$ 1,425
Balance Due NASD Dispute Resolution	= \$ 6,975

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

Crossclaim Filing Fee	= \$ 1,000
Member Fees	= \$ 5,200
Total Fees	= \$ 6,200
Less payments	= \$ 10,000
Balance Refunded By NASD Dispute Resolution	= \$ 3,800

Respondents, Investment Management Consultants, LTD and Richard L. Behr, Jr., and are jointly and severally liable for:

Forum Fees	= \$ 8,100
Total Fees	= \$ 8,100
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 8,100

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

Peter G. Bowen - Public Arbitrator, Presiding Chair
John Fleming Kelly, Esq. - Public Arbitrator
Martha M. Walker - Non-Public Arbitrator

Concurring Arbitrators:

Peter G. Bowen
Public Arbitrator, Presiding Chair

Signature Date

John Fleming Kelly, Esq.
Public Arbitrator

Signature Date

Martha M. Walker
Non-Public Arbitrator

Signature Date

8/8/06
Date of Service (NASD use only)

Respondents, Investment Management Consultants, LTD and Richard L. Behr, Jr., and are jointly and severally liable for:


Forum Fees	= \$ 8,100
Total Fees	= \$ 8,100
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 8,100

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

Peter G. Bowen - Public Arbitrator, Presiding Chair
John Fleming Kelly, Esq. - Public Arbitrator
Martha M. Walker - Non-Public Arbitrator

Concurring Arbitrators:


Peter G. Bowen
Public Arbitrator, Presiding Chair

4 AUGUST 2006
Signature Date

John Fleming Kelly, Esq.
Public Arbitrator

Signature Date

Martha M. Walker
Non-Public Arbitrator

Signature Date

2/2/2006
Date of Service (NASD use only)

Respondents, Investment Management Consultants, LTD and Richard L. Behr, Jr., and are jointly and severally liable for:

Forum Fees	= \$ 8,100
Total Fees	= \$ 8,100
Less payments	= \$ 0
Balance Due NASD Dispute Resolution	= \$ 8,100

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

Peter G. Bowen - Public Arbitrator, Presiding Chair
John Fleming Kelly, Esq. - Public Arbitrator
Martha M. Walker - Non-Public Arbitrator

Concurring Arbitrators:

Peter G. Bowen
Public Arbitrator, Presiding Chair

Signature Date


John Fleming Kelly, Esq.
Public Arbitrator

08/07/06
Signature Date

Martha M. Walker
Non-Public Arbitrator

Signature Date

8/3/2006
Date of Service (NASD use only)

Respondents, Investment Management Consultants, LTD and Richard I. Behr, Jr., and
are jointly and severally liable for:

Forum Fees	== \$ 8,100
Total Fees	== \$ 8,100
Less payments	== \$ 0
Balance Due NASD Dispute Resolution	== \$ 8,100

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

Peter G. Bowen - Public Arbitrator, Presiding Chair
John Fleming Kelly, Esq. - Public Arbitrator
Martha M. Walker - Non-Public Arbitrator

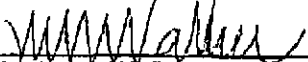
Concurring Arbitrators:

Peter G. Bowen
Public Arbitrator, Presiding Chair


Signature Date

John Fleming Kelly, Esq.
Public Arbitrator

Signature Date


Martha M. Walker
Non-Public Arbitrator


Signature Date


Date of Service (NASD use only)