

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

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In the Matter of the Arbitration Between:

Daniel S. Massey, Claimant v. Charles Schwab & Co., Inc., Respondent

Case Number: 04-07619

Hearing Site: Phoenix, Arizona

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Nature of the Dispute: Associated Person v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

W. Scott Greco, Esq.  
Frederick D. Greco, Esq.  
Greco & Greco, P.C.  
McLean, Virginia

For Respondent:

Karen Gillen, Esq.  
James Thomas Tucker, Esq.  
Ogletree, Deakins, Nash,  
Smoak & Stewart, P.C.  
Phoenix, Arizona

Brandon K. Hemley, Esq.  
Charles Schwab & Co., Inc.  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: November 1, 2004

Claimant's Uniform Submission Agreement signed: October 26, 2004

Statement of Answer filed by Respondent: January 10, 2005

Respondent's Uniform Submission Agreement signed: January 5, 2005

### **CASE SUMMARY**

Claimant alleged breach of contract, third-party beneficiary to contract with customers, fraud, and age discrimination while he was employed with Respondent.

Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested approximately \$500,000.00 in compensatory damages, \$1,000,000.00 in punitive damages, pre-judgment and post-judgment interest, and costs, including attorney's fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

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

On August 22, 2005, Respondent filed a Motion to Dismiss on the grounds that Claimant failed to state a claim upon which relief may be granted. On September 12, 2005, Claimant filed an opposition. On September 20, 2005, Respondent filed a reply to Claimant's opposition. On September 26, 2005, the Panel held a pre-hearing conference with the parties on this motion. After due deliberation in executive session, the Panel denied Respondent's motion without prejudice.

On November 15, 2005, the first day of the hearing, Respondent renewed its Motion to Dismiss. Claimant opposed it. After due deliberation, the Panel denied Respondent's renewed Motion to Dismiss.

At the initial pre-hearing conference held on March 23, 2005, the parties accepted the Panel's composition, which comprised of two public arbitrators and one non-public arbitrator.

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) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested, including the request for punitive damages, 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	= \$ 500.00
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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	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
<b>Total Member Fees</b>	<b>= \$8,550.00</b>

### **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 or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: October 17, 2005 1 session

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 2,400.00  
Pre-hearing conferences: March 23, 2005 1 session  
September 26, 2005 1 session

(4) Hearing sessions @ \$1,200.00/session = \$ 4,800.00  
Hearings: November 15, 2005 2 sessions  
November 16, 2005 2 sessions

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**Total Forum Fees** = \$ 7,650.00

1. The Panel assessed \$3,825.00 of the forum fees to Claimant.
2. The Panel assessed \$3,825.00 of the forum to Respondent.

### **Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 3,825.00
<u>Total Fees</u>	= \$ 4,325.00
<u>Less payments</u>	= \$ (1,700.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,625.00</b>

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 3,825.00
<u>Total Fees</u>	= \$ 12,375.00
<u>Less payments</u>	= \$ (8,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,825.00</b>

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

Merton E. Marks	-	Public Arbitrator, Presiding Chair
Robert C. Hubbard	-	Public Arbitrator
Jeffrey Charles Evanello	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Merton E. Marks  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Robert C. Hubbard  
Public Arbitrator

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

  
\_\_\_\_\_  
Jeffrey Charles Evanello  
Non-Public Arbitrator

11-17-05  
Signature Date

11/17/05  
Date of Service

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**Concurring Arbitrators' Signatures**



Merton E. Marks  
Chair, Public Arbitrator

November 17, 2005  
Signature Date

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Robert C. Hubbard  
Public Arbitrator

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Signature Date

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Jeffrey Charles Evanello  
Non-Public Arbitrator

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Signature Date

11/17/05  
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Robert C. Hubbard  
Public Arbitrator

11/17/2005  
Signature Date

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