

AWARD
NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Lester A. Johnson and Alberta M. Johnson, individually and as
Trustees of the Lester A. and Alberta M. Johnson Revocable Trust

and

99-02208
Scottsdale, Arizona

Name of Respondents

Charles Schwab & Co., Inc.
JR Rogers Investment Management, Inc.
Jim Richard Rogers

REPRESENTATION OF PARTIES

Lester A. Johnson and Alberta M. Johnson, individually and as Trustees of the Lester A. and Alberta M. Johnson Revocable Trust ("**Claimants**") were represented by Robert D. Mitchell, Esq., Mitchell Law Offices, Phoenix, Arizona.

Charles Schwab & Co., Inc. ("**Respondent Schwab**") was represented by Dena L. Narbaitz, Esq., Steefel Levitt & Weiss, San Francisco, California.

JR Rogers Investment Management, Inc. ("**Respondent JR Rogers**") and Jim Richard Rogers ("**Respondent Rogers**") did not appear at the hearing.

CASE INFORMATION

The Statement of Claim was filed on or about May 13, 1999. Letter dated November 11, 1999 advising of settlement with Respondent Charles Schwab & Co., Inc. Submission Agreement of Claimant Lester A. Johnson and Alberta M. Johnson, individually and as Trustees of the Lester A. and Alberta M. Johnson Revocable Trust was signed on April 30, 1999.

Respondent Charles Schwab & Co., Inc.'s Statement of Answer and Cross-Claim was filed on or about August 6, 1999. Submission Agreement of Respondent Charles Schwab & Co., Inc. was signed on July 23, 1999 by Jane Weston.

Respondents JR Rogers Investment Management, Inc. and Jim Richard Rogers did not file responsive pleadings.

CASE SUMMARY

Claimants submitted the following summary:

Claimants Lester A. and Alberta M. Johnson, individually and as trustees of the Lester A. and Alberta M. Johnson Revocable Trust, alleged that the Respondent Jim R. Rogers and his firm JR Rogers Investment Management, Inc. made unsuitable investments, churned the Claimants' trust account, and over-concentrated the account in highly speculative investments involving substantial risks that were inappropriate for a trust account of retired senior citizens. The Claimants alleged that the investments selected and purchased by the Respondents created a substantial financial loss of retirement savings to the Claimants.

The Claimants also alleged that the Respondents were negligent by using their discretionary authority to execute unsuitable and imprudent investment purchases for their account, by failing to advise the Claimants of the pertinent facts concerning the investments in the account, by violating NASD Conduct Rule 2310, by violating Arizona and Federal securities laws; by the churning of the Claimants' account, by the commission of common law fraud, *intentional misrepresentation*, *negligent misrepresentation*, breach of contract, breach of fiduciary duty, and failure to supervise.

RELIEF REQUESTED

The Claimants requested as an award as follows: *compensatory damages of at least \$650,090.00 for the out-of-pocket losses in the Claimants' account, plus lost opportunity damages based upon what a well-managed account would have been worth today given the Claimants' invested funds; recovery of the commissions, margin interest, and other fees charged on Claimants' investments; recovery of Claimants' filing fees and such other costs and expenses as have been incurred in bringing the arbitration; and recovery of the Claimants' attorney fees. The Claimants also sought punitive damages in an amount not less than \$500,000.00, and such other relief in favor of the Claimants as the arbitrators deem just and proper under the circumstances.*

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents JR Rogers Investment Management, Inc. and Jim Richard Rogers had been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents JR Rogers Investment Management, Inc. and Jim Richard Rogers had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent Jim Richard Rogers did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

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 original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (the "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. The claims asserted in this matter against Respondents JR Rogers Investment Management, Inc. and Jim Richard Rogers are denied in their entirety.
2. That 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.
3. Other than the Forum Fees noted below, 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 Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$500.00
Cross claim filing fee	= \$500.00

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. In this matter, the member firm(s) is Charles Schwab & Co., Inc.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00

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 arbitrator(s), 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 \$1,200.00	= \$1,200.00
Pre-hearing conference(s): December 2, 1999 1 session	

One (1) Hearing session x \$1,200.00	= \$1,200.00
Hearing Date(s): February 17, 2000 1 session	

Total Forum Fees	= \$2,400.00
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The Arbitration Panel has assessed \$2,400.00 of the forum fees to Lester A. Johnson and Alberta M. Johnson, individually and as Trustees of the Lester A. and Alberta M. Johnson Revocable Trust.

Fee Summary

Claimant, Lester A. Johnson and Alberta M. Johnson, individually and as Trustees of the Lester A. and Alberta M. Johnson Revocable Trust, shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$2,400.00
Total Fees	= \$2,900.00
<u>Less payments</u>	= \$1,700.00
Balance Due NASD Regulation, Inc.	= \$1,200.00

Respondent, Charles Schwab & Co., Inc., shall be and hereby is liable for:

Cross Claim Filing Fee	= \$ 500.00
<u>Member Fees</u>	= \$3,100.00
Total Fees	= \$3,600.00

<u>Less payments</u>	<u>= \$2,500.00</u>
Balance Due NASD Regulation, Inc.	= \$1,100.00

All balances are due to NASD Regulation, Inc.

/s/ Howard S. Balddwin

Howard S. Baldwin
Public Arbitrator, Presiding Chair

Dated:

March 10, 2000

/s/ Sandra Lynn Slaton

Sandra Lynn Slaton, J.D.
Public Arbitrator

March 6, 2000

/s/ James L. Kirkman

James L. Kirkman
Industry Arbitrator

March 6, 2000

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Less payments

= \$2,500.00

Balance Due NASD Regulation, Inc.

= \$1,100.00

All balances are due to NASD Regulation, Inc.

Howard S. Baldwin
Howard S. Baldwin
Public Arbitrator, Presiding Chair

Dated:

3-10-00

Sandra Lynn Slaton, J.D.
Public Arbitrator

James L. Kirkman
Industry Arbitrator

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Less payments

= \$2,500.00

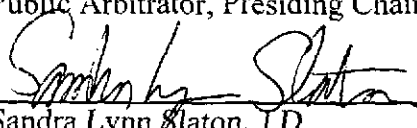
Balance Due NASD Regulation, Inc.

= \$1,100.00

All balances are due to NASD Regulation, Inc.

Dated:

Howard S. Baldwin
Public Arbitrator, Presiding Chair



Sandra Lynn Slaton, J.D.
Public Arbitrator

3/6/00

James L. Kirkman
Industry Arbitrator

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NATIONAL ASSOCIATION
OF SECURITIES DEALERS, INC.
RECEIVED
MAR 08 2000
= \$2,500.00
= \$1,100.00

Less payments

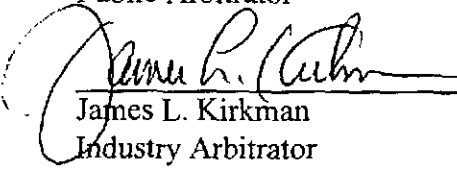
Balance Due NASD Regulation, Inc.

All balances are due to NASD Regulation, Inc.

Dated:

Howard S. Baldwin
Public Arbitrator, Presiding Chair

Sandra Lynn Slaton, J.D.
Public Arbitrator



James L. Kirkman
Industry Arbitrator

6 MAR 2000