

**AWARD**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of Claimants

Gary Brent Mayes, Individually and  
as Guardian of the Estate of Elwin D. Mayes

vs.

Case Number: 08-02698  
Hearing Site: Houston, Texas

Name of Respondent

Charles Schwab & Co., Inc.

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**NATURE OF THE DISPUTE**

Customers vs. Member

**REPRESENTATION OF PARTIES**

Gary Brent Mayes ("Mayes"), Individually and as Guardian of the Estate of Elwin D. Mayes ("Estate"), hereinafter collectively referred to as "Claimants," were represented by Robert A. Uhl, Esq., Philip M. Aidikoff, Esq., and Ryan K. Bakhtiari, Esq., Aidikoff, Uhl & Bahktiari, Beverly Hills, California, and by David P. Meyer, Esq. and Marnie C. Lambert, Esq., David P. Meyer & Associates Co. LPA, Columbus, Ohio. At the hearing, Claimants were represented by David P. Meyer, Esq., and Thomas A. Hargett, Esq., Maddox Hargett & Caruso, P.C., Fishers, Indiana.

Charles Schwab & Co., Inc. ("Schwab" or "Respondent") was represented by Stacey M. Garrett, Esq. and Audette Paul Morales, Esq., Keesal, Young & Logan, PC, Long Beach, California.

**CASE INFORMATION**

The Statement of Claim was filed jointly on or about August 1, 2008. The Submission Agreement of Claimants was signed on or about July 29, 2008.

The Statement of Answer was filed by Schwab on or about September 26, 2008. The Submission Agreement of Schwab was signed on or about August 14, 2008 by Richard Karoly, Vice President & Associate General Counsel.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; breach of written contract; constructive fraud; fraud by misrepresentation and omission; negligence; respondeat superior; negligent supervision; and violations of the Texas Securities Act. The causes of action related to Claimants' investment in the Schwab YieldPlus Fund. Claimants claimed that Respondent presented the Schwab YieldPlus Fund as an alternative to investing in money market and long-term bond funds, and that it provided increased yield potential with only marginally higher risk than a money market fund. Claimants further claimed that the Schwab YieldPlus Fund followed a high-risk strategy that was inappropriate for an ultra short term bond fund to use, and that this strategy resulted in significant losses for Claimants.

Unless specifically admitted in its Answer, Schwab denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the damages for which Claimants seek to hold Schwab liable resulted, in whole or in part, from Claimants' own acts or omissions, and that Schwab is not responsible for or liable to Claimants for their own wrongful or negligent acts or omissions; Claimants, by their conduct, approved, authorized, and/or ratified Schwab's actions; Claimants failed to use requisite due diligence in the monitoring, trading, managing, and handling of the accounts; Claimants voluntarily assumed the risk of investing and are precluded from recovery herein; and the damages Claimants seek, particularly purported "lost opportunity" damages, are too speculative to be awarded.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$ 186,707.00
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified
Other Non-Monetary Relief	Rescission

At the Hearing, Claimants requested an award in the amount of:

Option 1 – Texas Securities Statutory Damage Request Statutory Damages (included interest at 6% Per annum)	\$ 230,515.00
Attorneys' Fees	\$ 75,000.00
Other Costs	\$ 16,000.00
Total pursuant to Texas Securities Act	\$ 321,515.00

Option 2 - Market Adjusted Damage Request	
Lehman 9-12 Months US Treasury Index	\$ 230,515.00
Attorneys' Fees	\$ 70,000.00
Other Costs	<u>\$ 16,000.00</u>
Total pursuant to Common Law Claims	\$ 300,000.00

Respondent requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and other relief as provided by law.

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

The Panel acknowledges that they have each read the pleadings and other materials filed by the parties.

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.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Charles Schwab & Co., Inc., is liable for and shall pay to Claimants, Gary Brent Mayes, Individually and as Guardian of the Estate of Elwin D. Mayes, the sum of \$100,000.00 in compensatory damages;
- 2.) Respondent, Charles Schwab & Co., Inc., is liable for and shall pay to Claimants, Gary Brent Mayes, Individually and as Guardian of the Estate of Elwin D. Mayes, the sum of \$16,000.00 in costs; and
- 3.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim filing fee = \$ 1,425.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings. Accordingly, as a party, Charles Schwab & Co., Inc. is assessed the following:

Member surcharge	= \$	1,700.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	2,750.00

### **Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each hearing session conducted. A 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 \$1,125.00	= \$	1,125.00
Pre-hearing conference: November 20, 2008	1 session	
Five (5) Hearing sessions x \$1,125.00	= \$	5,625.00
Hearing Dates: July 28, 2009	2 sessions	
July 29, 2009	2 sessions	
July 30, 2009	1 session	
<b>Total Hearing Session Fees</b>	<b>= \$</b>	<b>6,750.00</b>

The Panel has assessed \$3,375.00 of the hearing session fees jointly and severally to Gary Brent Mayes, Individually and as Guardian of the Estate of Elwin D. Mayes.

The Panel has assessed \$3,375.00 of the hearing session fees to Charles Schwab & Co., Inc.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

**ARBITRATION PANEL**

Frank M. Romano - Public Arbitrator, Presiding Chair  
William A. Allen - Public Arbitrator  
Christine W. Powell - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ Frank M. Romano  
Frank M. Romano  
Public Arbitrator, Presiding Chair

August 11, 2009  
Signature Date

/s/ William A. Allen  
William A. Allen  
Public Arbitrator

August 11, 2009  
Signature Date

Christine W. Powell  
Non-Public Arbitrator

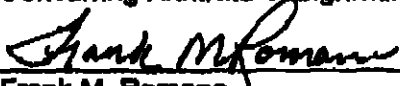
Signature Date

August 12, 2009  
Date of Service (For FINRA office use only)

**ARBITRATION PANEL**

Frank M. Romano - Public Arbitrator, Presiding Chair  
William A. Allen - Public Arbitrator  
Christine W. Powell - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

  
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Frank M. Romano  
Public Arbitrator, Presiding Chair

8/11/09  
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Signature Date

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William A. Allen  
Public Arbitrator

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Signature Date

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Christine W. Powell  
Non-Public Arbitrator

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