

**Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant:

Case Number: 08-02552

Bruce M. Eliot and Denise O. Eliot,  
as joint tenants

Name of the Respondent:

Hearing Site: Los Angeles, California

Charles Schwab & Co., Inc.

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Nature of the Dispute: Customers vs. Member

**REPRESENTATION OF PARTIES**

Claimants Bruce M. Eliot and Denise O. Eliot, as joint tenants, hereinafter collectively referred to as "Claimants": Ryan K. Bakhtiari, Esq., Aidikoff, Uhl & Bakhtiari, Beverly Hills, California and Marnie C. Lambert, Esq., David P. Meyer & Associates Co., Columbus, Ohio

Respondent Charles Schwab & Co., Inc. referred to as "Respondent" or "Schwab": Stacey M. Garrett, Esq. and Kendra S. Canape, Esq., Kessal Young & Logan, PC, Long Beach, California

**CASE INFORMATION**

Statement of Claim filed: July 22, 2008

Claimant Bruce M. Eliot signed the Submission Agreement: July 16, 2008

Claimant Denise O. Eliot signed the Submission Agreement: July 7, 2008

Statement of Answer filed by Respondent: September 17, 2008

Respondent signed the Submission Agreement: July 31, 2008

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) Breach of Fiduciary Duty; 2) Breach of Written Contract; 3) Constructive Fraud; 4) Fraud by Misrepresentation and Omission; 5) Negligence; 6) Respondeat Superior; 7) Negligent Supervision; and 8) Violations of California Securities Act. The causes of action relate to investments in shares of Charles Schwab YieldPlus Fund.

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Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. General and compensatory damages in an amount according to proof but not less than \$164,261.00;
2. Lost opportunity costs in an amount according to proof;
3. Cost of proceedings;
4. Punitive damages in an amount according to proof;
5. Interest at the legal rate on all sums recovered;
6. Attorneys' fees and costs;
7. Rescission; and
8. Other and further relief as this Panel deems just and appropriate.

Respondent requested:

1. An award finding that Claimants are not entitled to recover damages from Schwab and dismissing their claims in their entirety with prejudice;
2. Costs; and
3. All other relief as provided by law.

At the close of the hearing, Claimants requested:

1. Compensatory damages in the amount of \$147,176.00;
2. Attorneys' fees in the amount of \$49,058.00; and
3. Expert Witness fees in the amount of \$16,000.00.

### **OTHER ISSUES CONSIDERED AND 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 to and shall pay Claimants Bruce M. Eliot and Denise O. Eliot compensatory damages in the amount of \$80,000.00.
2. Respondent Charles Schwab & Co., Inc. is liable to and shall pay Claimants Bruce M. Eliot and Denise O. Eliot expert witness fees in the amount of \$16,000.00.

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3. Respondent Charles Schwab & Co., Inc. is liable to and shall pay Claimants Bruce M. Eliot and Denise O. Eliot \$300.00 as reimbursement of the non-refundable portion of the initial claim filing fee.
4. The parties shall bear their respective costs except where noted otherwise.
5. Any and all other relief requested and not expressly granted, including punitive damages and attorneys' fees, is denied.

### 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 or to the member firm that employed the associated person at the time of the events giving rise to the dispute. 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

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 5-8, 2009, adjournment by parties	= \$ 1,125.00
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1. The Panel has assessed \$562.50 of the adjournment fees jointly and severally to Claimants.
2. The Panel has assessed \$562.50 of the adjournment fees to Respondent.

#### Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on a discovery-related motion on the papers with one (1) arbitrator @ \$200.00 Claimant submitted one (1) discovery-related motion	= \$ 200.00
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Total Discovery-Related Motion Fees	= \$ 200.00
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The Panel has assessed \$200.00 of the discovery-related motion fees to Respondent.

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**Contested Motion for Issuance of a Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena  
     One (1) arbitrator @ \$200.00 = \$ 200.00

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Total Contested Motion for Issuance of Subpoena Fees = \$ 200.00

The Panel has assessed \$200.00 of the contested motion for issuance of a subpoena fees to Respondent.

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each 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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00/session = \$ 2,250.00  
 Pre-hearing conferences: November 5, 2008 1 session  
   May 5, 2009 1 session

Five (5) Hearing sessions @ \$1,125.00/session = \$ 5,625.00  
 Hearing Dates: September 22, 2009 2 sessions  
                                   September 23, 2009 2 sessions  
                                   September 24, 2009 1 session

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Total Hearing Session Fees = \$ 7,875.00

The Panel has assessed \$7,875.00 of the hearing session fees to Respondent.

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

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**ARBITRATION PANEL**

Robert B. Hansohn	-	Public Arbitrator, Presiding Chairperson
Richard J. Stall, Jr.	-	Public Arbitrator
Philip W. Burge	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures:**

\_\_\_\_\_  
Robert B. Hansohn  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Richard J. Stall, Jr.  
Public Arbitrator

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

\_\_\_\_\_  
Philip W. Burge  
Non-Public Arbitrator

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

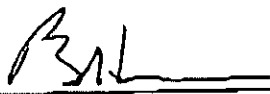
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Date of Service (For FINRA Dispute Resolution use only)

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**Concurring Arbitrators' Signatures:**



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Robert B. Hansohn  
Public Arbitrator, Presiding Chairperson

Sept 27, 2009

Signature Date

\_\_\_\_\_  
Richard J. Stall, Jr.  
Public Arbitrator

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

\_\_\_\_\_  
Philip W. Burge  
Non-Public Arbitrator

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

September 30, 2009

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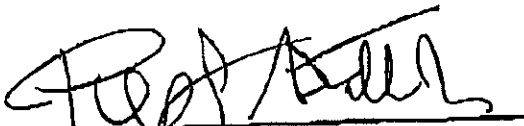
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Robert B. Hansohn  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Richard J. Stall, Jr.  
Public Arbitrator

Sept. 25, 2009  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Philip W. Burge  
Non-Public Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chairperson

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Signature Date

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Richard J. Stall, Jr.  
Public Arbitrator

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

*Philip W. Burge*  
\_\_\_\_\_  
Philip W. Burge  
Non-Public Arbitrator

*Sept 26, 2009*  
\_\_\_\_\_  
Signature Date

*September 30, 2009*  
\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution use only)