

FINRA Dispute Resolution
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Number of Pages including the Cover Sheet: 11

Date: 09/09/2009

Case Number: 08-02307
Case Name: Raymond Kelly et al v. Charles Schwab & Co., Inc.
To: Marnie C. Lambert
Phone: 614 224-6000 Fax: 614 224-6066
From: Sophia Kronic
Case Administrator
Message: *SK*

This facsimile transmission is intended only for the addressee(s) shown above. It may contain information that is privileged, confidential, or otherwise protected from disclosure. Any review, dissemination or use of this transmission or its contents by persons other than addressee is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone at the above number.



September 9, 2009

Marnie C. Lambert, Esq.
David P. Meyer & Associates
1320 Dublin Road
Suite 100
Columbus, OH 43215

Subject: FINRA Dispute Resolution Arbitration Number 08-02307
Raymond Kelly et al v. Charles Schwab & Co., Inc.

Dear Mr. Lambert:

In accordance with the Code of Arbitration Procedure I enclose the decision reached by the arbitrator(s) in the above-referenced matter.

Responsibility to Pay Monetary Award

Pursuant to the Code of Arbitration Procedure¹ the responsible party must pay any monetary awards within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If an award is not paid within 30 days, the responsible party must pay post-judgment interest at the legal rate or as provided in the award by the arbitrator(s).

Tracking Payment of Award

FINRA Dispute Resolution has implemented a system of monitoring and tracking compliance with arbitration awards by members and associated persons. We request prevailing claimants to notify us in writing when their awards have not been paid within 30 days of receipt of the award, and require member firms to certify in writing that they have complied with awards against them or their associated persons.

Written notification concerning award compliance or lack thereof must be directed to:

Avichai Badash
FINRA Dispute Resolution
One Liberty Plaza
165 Broadway, 52nd Floor

¹Customer Code Rule 12904
Industry Code Rule 13904
Old Code Rule 10330(h)

New York, NY 10006
212-858-4325 (tel) 301-527-4739 (fax)

Expedited Suspension Proceedings for Non-Payment of Awards

Members and associated persons who do not comply with an award in a timely manner are subject to expedited suspension proceedings as set forth in Rule 9554.

Right to File Motion to Vacate Award

All awards are **final** and are not subject to review or appeal by the arbitration panel or by FINRA Dispute Resolution. Any party wishing to challenge the award must make a motion to vacate the award **in a federal or state court** of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 10, or applicable state statute. There are limited grounds for vacating an arbitration award, and a party must bring a motion to vacate within the time period specified by the applicable statute. Parties and counsel should consult federal and state statutes and case law to determine the appropriate court, standards, and time limitations in their individual circumstances. FINRA Dispute Resolution is not authorized to provide legal advice concerning a motion to vacate.

A motion to vacate, confirm, or modify an arbitration award is a matter only between the parties to the arbitration. FINRA Dispute Resolution is not a proper party to post-award motions and should not be named as a party to any post-award motion. However, for cases filed on or after April 12, 2004, if the award contains expungement relief, or if a party seeks expungement relief in court, there may be a duty to name FINRA as a party as provided in Rule 2080.

Questions Concerning Award

Please direct any questions regarding this award to me. **The parties must not contact the arbitrators directly.**

Forum Fees

You will receive under separate cover an invoice that reflects the fees assessed and any outstanding balance or refund due. **Fees are due and payable to FINRA Dispute Resolution upon receipt of the invoice and remitted to the address specified on the invoice.**

Any applicable refunds will also be sent under separate cover approximately 45 days after the case closes. Pursuant to the Code of Arbitration Procedure, "Any refunds of fees or costs incurred under the Code will be paid directly to the named parties, even if a non-party made payment on behalf of the named parties."²

All questions regarding payment of fees and refunds should be directed to FINRA Finance at (240) 386-5910.

Arbitration Evaluation

As a service organization, the primary goals of FINRA Dispute Resolution are the integrity of its process and the satisfaction of its clients. To ensure that we are meeting your needs and

² Customer Code Rule 12902(e)
Industry Code Rule 13902(e)

satisfying our commitment to you, **we need to hear from you**. If you have not already done so, please take the time to complete an evaluation of our services, the process, and the arbitrator(s) assigned to your case. For your convenience, we have now made it possible for you to evaluate our services using the Internet. Please direct your Web browser to <http://www.finra.org/arbevaluation>.

If you do not have Internet access, or have difficulty completing the evaluation form online, we will send a hard copy evaluation form to you. The completed evaluation form should be mailed in to the address indicated below. If you need a hard copy of the evaluation form, please contact the undersigned. Whenever possible, however, we encourage you to use the new online version, as it will help us to review your feedback in a more expeditious manner. Your feedback is a valuable and necessary component in our efforts to serve you better.

Very truly yours,



Sophia Kronic
Case Administrator
Phone: 213-613-2680
Fax: 301-527-4766
WesternProcessingCenter@finra.org

SK2:sg1:LC09A
idr: 08/25/2009

RECIPIENTS:

Michael M. Gless, Esq., Charles Schwab & Co., Inc.
Keesal Young & Logan, 400 Oceangate, P.O. Box 1730, Long Beach, CA 90801-1730

Marnie C. Lambert, Esq., Elsie Kelly
David P. Meyer & Associates, 1320 Dublin Road, Suite 100, Columbus, OH 43215

Marnie C. Lambert, Esq., Raymond Kelly
David P. Meyer & Associates, 1320 Dublin Road, Suite 100, Columbus, OH 43215

Marnie C. Lambert, Esq., Raymond O's Kelly & Elsie M. Ke U/A dtd
David P. Meyer & Associates, 1320 Dublin Road, Suite 100, Columbus, OH 43215

Marnie C. Lambert, Esq., Raymond O's Kelly Rev Liv Trust U/A dtd
David P. Meyer & Associates, 1320 Dublin Road, Suite 100, Columbus, OH 43215

Award
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Claimants

Case Number: 08-02307

Raymond Kelly
Elsie Kelly
Raymond O's Kelly & Elsie M.Ke U/A dtd 05/27/05
Raymond O's Kelly Rev Liv Trust U/A dtd 05/27/05
Raymond O's Kelly & Elsie M.Ke U/A dtd 05/27/05

Respondent

Hearing Site: Reno, Nevada

Charles Schwab & Co., Inc.

Nature of the Dispute: Customers vs. Member

REPRESENTATION OF PARTIES

Claimants, Raymond Kelly, Elsie Kelly, Raymond O's Kelly & Elsie M. Ke U/A dtd 05/27/05, Raymond O's Kelly Rev Liv Trust U/A dtd 05/27/05, and Raymond O's Kelly & Elsie M.Ke U/A dtd 05/27/05, hereinafter collectively referred to as "Claimants": Marnie C. Lambert, Esq., David P. Meyer & Associates, Columbus, Ohio.

Respondent, Charles Schwab & Co., Inc., hereinafter referred to as "Schwab" or "Respondent": Michael M. Gless, Esq., Keesal, Young & Logan, Long Beach, California.

CASE INFORMATION

Statement of Claim filed on or about: July 8, 2008

Claimants signed the Submission Agreement: July 12, 2008

Statement of Answer filed by Respondent on or about: September 3, 2008

Respondent signed the Submission Agreement: July 17, 2008

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 Nevada Securities Act. Claimants' dispute involved investments in the Schwab YieldPlus Fund.

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Arbitration No. 08-02307
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Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. General and compensatory damages in an amount not less than \$91,022.00;
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. Such other and further relief as the Panel deems just and proper.

Respondent requested the Panel:

1. Issue an award finding that Claimants are not entitled to recover damages from Schwab and dismissing their claims in their entirety with prejudice;
2. Award Schwab its costs; and
3. Award Schwab all other relief as provided by law.

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

1. Respondent is liable to and shall pay Claimants the principal sum of \$74,430.77.
2. Respondent is liable to and shall pay Claimants interest on the aforementioned award amount of \$74,430.77 at the rate of 3.25% per annum from July 8, 2008 through August 26, 2009.
3. Respondent is liable to and shall pay Claimants attorneys' fees in the amount of \$25,650.00, pursuant to Nevada Revised Statute § 90.660.
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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 Arbitration No. 08-02307
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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 = \$975.00

**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Schwab is assessed the following:

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

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
 with one arbitrator @ \$200.00 = \$200.00
 Respondent submitted a request for a subpoena.

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

1. The Panel has assessed \$100.00 of the contested motion for issuance of subpoena fees to Respondent.
2. The Panel has assessed \$100.00 of the contested motion for issuance of subpoena fees to Claimants.

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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel @ \$750.00/session	= \$1,500.00
Pre-hearing conferences: October 28, 2008	1 session
November 17, 2008	1 session
Five (5) Hearing sessions @ \$750.00/session	= \$3,750.00
Hearing Dates: August 25, 2009	2 sessions
August 26, 2009	3 sessions

Total Hearing Session Fees = \$5,250.00

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1. The Panel has assessed \$5,250.00 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

Darryl J. Horowitz	-	Public Arbitrator, Presiding Chairperson
Paul H. Lamboley	-	Public Arbitrator
Barry A. Mainardi	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Darryl J. Horowitz
Public Arbitrator, Presiding Chairperson

9/14/09

Signature Date

Paul H. Lamboley
Public Arbitrator

Signature Date

Barry A. Mainardi
Non-Public Arbitrator

Signature Date

September 9, 2009

Date of Service (For FINRA Dispute Resolution use only)

FINRA Dispute Resolution
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ARBITRATION PANEL

Darryl J. Horowitz	-	Public Arbitrator, Presiding Chairperson
Paul H. Lamboley	-	Public Arbitrator
Barry A. Mainardi	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Darryl J. Horowitz
Public Arbitrator, Presiding Chairperson

Signature Date



Paul H. Lamboley
Public Arbitrator

09.07.09

Signature Date

Barry A. Mainardi
Non-Public Arbitrator

Signature Date

September 9, 2009

Date of Service (For FINRA Dispute Resolution use only)

FINRA Dispute Resolution
Arbitration No. 08-02307
Award Page 5 of 5

ARBITRATION PANEL

Darryl J. Horowitz	-	Public Arbitrator, Presiding Chairperson
Paul H. Lamboley	-	Public Arbitrator
Barry A. Mainardi	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Darryl J. Horowitz
Public Arbitrator, Presiding Chairperson

Signature Date

Paul H. Lamboley
Public Arbitrator

Signature Date



Barry A. Mainardi
Non-Public Arbitrator

9-9-09
Signature Date

September 9, 2009
Date of Service (For FINRA Dispute Resolution use only)