

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

Date: 10/02/2009

Case Number: 08-02173

Case Name: Laurence Rivkin, individually, et al. vs. Charles Schwab and Company, Inc., et al.

To: Brian D. Miller

Phone: 619-696-5200 Fax: 619-696-5393

From: Paula Union *PUD*  
Case Administrator

Message:

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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.



October 2, 2009

Brian D. Miller, Esq.  
Miller & Milove  
750 B Street  
Suite 1880  
San Diego, CA 92101

Subject: FINRA Dispute Resolution Arbitration Number 08-02173  
Laurence Rivkin, individually, et al. vs. Charles Schwab and Company, Inc., et al.

Dear Mr. Miller:

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 Procedure<sup>1</sup> 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

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<sup>1</sup>Customer 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."<sup>2</sup>

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

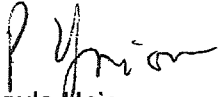
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<sup>2</sup> Customer Code Rule 12902(e)  
Industry Code Rule 13902(e)

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,



Paula Union

Case Administrator

Phone: 213-613-2680

Fax: 301-527-4766

WesternProcessingCenter@finra.org

PRU:mdo:LC09A

idr: 08/25/2009

**RECIPIENTS:**

Philip A. McLeod, Esq., The Charles Schwab Corporation  
Keesal Young & Logan, 450 Pacific Avenue, San Francisco, CA 94133

Philip A. McLeod, Esq., Charles Schwab Investment Management Inc  
Keesal Young & Logan, 450 Pacific Avenue, San Francisco, CA 94133

Philip A. McLeod, Esq., Charles Schwab & Co., Inc.  
Keesal Young & Logan, 450 Pacific Avenue, San Francisco, CA 94133

Brian D. Miller, Esq., LNR Family Trust dtd 08/02/1987  
Miller & Milove, 750 B Street, Suite 1880, San Diego, CA 92101

Brian D. Miller, Esq., Laurence Rivkin, the IRA Rollver  
Miller & Milove, 750 B Street, Suite 1880, San Diego, CA 92101

Brian D. Miller, Esq., Laurence Rivkin  
Miller & Milove, 750 B Street, Suite 1880, San Diego, CA 92101

**Award**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimants  
Laurence Rivkin, individually;  
Laurence Rivkin as trustee of the  
LNR Family Trust dated 8/2/1987 and  
the Laurence Rivkin IRA Rollover

Case Number: 08-02173

Name of the Respondents  
Charles Schwab & Co., Inc.;  
The Charles Schwab Corporation and  
Charles Schwab Investment Management, Inc.

Hearing Site: San Diego, California

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Nature of the Dispute: Customers vs. Member and Non-Members

**REPRESENTATION OF PARTIES**

Claimants, Laurence Rivkin, individually, Laurence Rivkin as trustee of the LNR Family Trust dated 8/2/1987 ("the trust"), and the Laurence Rivkin IRA Rollover ("the IRA Rollover") hereinafter collectively referred to as "Claimants": Brian D. Miller, Esq., Miller & Milove, San Diego, California

Respondents, Charles Schwab & Co., Inc. ("C. Schwab"), The Charles Schwab Corporation ("Schwab Corporation") and Charles Schwab Investment Management, Inc. ("Schwab Management") hereinafter collectively referred to as "Respondents": Philip A. McLeod, Esq., Keesal Young & Logan, San Francisco, California

**CASE INFORMATION**

Statement of Claim filed on or about: July 1, 2008

Amended Statement of Claim filed on or about: September 16, 2008

Second Amended Statement of Claim filed on or about: April 2, 2009

Laurence Rivkin, individually and as Trustee of the LNR Family Trust dated 8/2/1987 signed the Submission Agreement: June 11, 2008

Statement of Answer filed by C. Schwab on or about: August 26, 2008

Statement of Answer to the Second Amended Statement of Claim filed by Respondents on or about: May 28, 2009

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**Arbitration No. 08-02173**  
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**C. Schwab signed the Submission Agreement: July 11, 2008**

**Schwab Corporation signed the Submission Agreement: May 26, 2009**

**Schwab Management signed the Submission Agreement: May 26, 2009**

### **CASE SUMMARY**

In their Statements of Claim, Claimants asserted the following causes of action: securities fraud; breach of fiduciary duty and constructive fraud; fraud and deceit; California securities fraud; unfair sales practices; negligence and negligent misrepresentation; and breach of contract. The causes of action relate to transactions in the Schwab YieldPlus Fund.

Unless specifically admitted in their Answers, Respondents denied the allegations made in the Statements of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. Compensatory damages in an amount exceeding \$370,000.00;
2. Unspecified exemplary or punitive damages;
3. Prejudgment and post-judgment interest at the maximum legal rate dating from the date of the original investment;
4. Filing fees, expert witness fees, attorneys' fees, costs and expenses; and
5. Such other relief as the Panel may deem just and proper.

In the Amended and Second Amended Statements of Claim, Claimants requested:

1. Compensatory damages in an amount exceeding \$400,000.00;
2. Unspecified exemplary or punitive damages;
3. Prejudgment and post-judgment interest at the maximum legal rate dating from the date of the original investment;
4. Filing fees, expert witness fees, attorneys' fees, costs and expenses; and
5. Such other relief as the Panel may deem just and proper.

At the close of the hearing, Claimants requested the following relief regarding the trust:

1. Compensatory damages (principal and interest) of \$645,440.00;
2. Punitive and exemplary damages of \$2,000,000.00 or an amount as the Panel deems appropriate;
3. Expert fee costs of \$13,000.00;
4. The assessment of forum fees against Respondents;
5. Other costs (copying and court reporter and transcript) in the amount of \$5,002.83; and
6. Post-award interest at the California legal rate.

At the close of the hearing, Claimants requested the following relief regarding the IRA

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**Rollover:**

1. Compensatory damages (principal and interest) of \$20,499.82; and
2. Post-award interest at the California legal rate.

**In their Answers, Respondents requested:**

1. The dismissal of all claims in their entirety with prejudice;
2. An award of costs; and
3. An award of 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.

On April 2, 2009, Claimants filed a motion to amend the Amended Statement of Claim together with a March 31, 2009 Stipulation to the filing of a Second Amended Statement of Claim. On April 14, 2009, after due deliberation, the Panel granted Claimants' motion to amend the Amended Statement of Claim. The Second Amended Statement of Claim added the IRA Rollover as a Claimant and added Schwab Corporation and Schwab Management as Respondents.

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. Respondents are jointly and severally liable to and shall pay the Laurence Rivkin IRA Rollover compensatory damages in the sum of \$5,978.00.
2. Respondents are jointly and severally liable and shall pay Laurence Rivkin, Trustee of the LNR Family Trust dated 8/2/1987 compensatory damages in the sum of \$321,267.00.
3. Any and all relief not specifically addressed herein, including exemplary or punitive damages, 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.*

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**Arbitration No. 08-02173**  
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**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

**Discovery-Related Motion Fees**

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

One (1) Decision on discovery-related motion on the papers with one (1) arbitrator @ \$200.00	= \$ 200.00
<u>Claimants submitted one (1) discovery-related motion</u>	
<u>Total Discovery-Related Motion Fees</u>	<u>= \$ 200.00</u>

1. The Panel has assessed \$200.00 of the discovery-related motion fees to Claimant, Laurence Rivkin, trustee of the LNR Family Trust dated 8/2/1987.

**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:

One (1) Pre-hearing session with Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: October 27, 2008 1 session	
Nine (9) Hearing sessions @ \$1,125.00/session	= \$10,125.00
Hearing Dates: September 14, 2009 2 sessions	
September 15, 2009 2 sessions	
September 16, 2009 2 sessions	
September 17, 2009 2 sessions	
September 18, 2009 1 session	
<u>Total Hearing Session Fees</u>	<u>= \$11,250.00</u>

1. The Panel has assessed \$5,625.00 of the hearing session fees to Claimant, Laurence Rivkin, Trustee of the LNR Family Trust dated 8/2/1987.
2. The Panel has assessed \$5,625.00 of the hearing session fees jointly and severally to Respondents.

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



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Arbitration No. 08-02172  
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**ARBITRATION PANEL**

Michael D. Briggs	-	Public Arbitrator, Presiding Chairperson
Judith A. Guet	-	Public Arbitrator
Steven A. Fox	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Michael D. Briggs  
 Michael D. Briggs  
 Public Arbitrator, Presiding Chairperson

9/30/09  
 Signature Date

\_\_\_\_\_  
 Judith A. Guet  
 Public Arbitrator

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

\_\_\_\_\_  
 Steven A. Fox  
 Non-Public Arbitrator

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

10/01/09

\_\_\_\_\_  
 Date of Service (For FINRA Dispute Resolution use only)

FINRA Dispute Resolution  
Arbitration No. 08-02173  
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**ARBITRATION PANEL**

Michael D. Briggs	-	Public Arbitrator, Presiding Chairperson
Judith A. Gust	-	Public Arbitrator
Steven A. Fox	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Michael D. Briggs  
Public Arbitrator, Presiding Chairperson

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

*Judith A. Gust*  
Judith A. Gust  
Public Arbitrator

10/1/09  
Signature Date

\_\_\_\_\_  
Steven A. Fox  
Non-Public Arbitrator

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

10/01/09

\_\_\_\_\_  
Date of Service (For FINRA Dispute Resolution use only)

FINRA Dispute Resolution  
Arbitration No. 08-02173  
Award Page 5 of 5

**ARBITRATION PANEL**

Michael D. Briggs	-	Public Arbitrator, Presiding Chairperson
Judith A. Gust	-	Public Arbitrator
Steven A. Fox	-	Non-Public Arbitrator

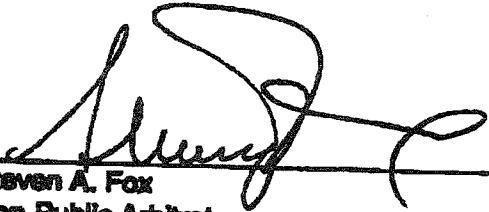
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\_\_\_\_\_  
Michael D. Briggs  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Judith A. Gust  
Public Arbitrator

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

  
\_\_\_\_\_  
Steven A. Fox  
Non-Public Arbitrator

10-1-09  
Signature Date

10/01/09  
Date of Service (For FINRA Dispute Resolution use only)