Award FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Everett C. Ross, individually, and as trustee of Everett C. and Imogene G. Ross T U/A DTD 10/11/1990 and

Imogene G. Ross, individually, and as trustee of Everett C. and Imogene G. Ross T U/A DTD

10/11/1990

Name of the Respondent Charles Schwab & Co., Inc. Hearing Site: San Diego, California

Case Number: 08-02082

Nature of the Dispute: Customers vs. Member

REPRESENTATION OF PARTIES

Claimants, Everett C. Ross, individually ("E. Ross"), and as trustee of Everett C. and Imogene G. Ross T U/A DTD 10/11/1990 ("Trustee Everett Ross"), and Imogene G. Ross, individually ("I. Ross"), and as trustee of Everett C. and Imogene G. Ross T U/A DTD 10/11/1990 ("Trustee Imogene Ross"), hereinafter collectively referred to as "Claimants": Ryan K. Bakhtiari, Esq., Aidikoff, Uhl & Bakhtiari, Beverly Hills, California and David P. Meyer, Esq., David P. Meyer & Associates Co., LPA, Columbus, Ohio

Respondent Charles Schwab & Co., Inc. hereinafter referred to as "Respondent": Stacey M. Garrett, Esq. and Terry Ross, Esq., Keesal, Young & Logan, Long Beach, California

CASE INFORMATION

Statement of Claim filed on or about: June 23, 2008

Claimant E. Ross signed the Submission Agreement: June 20, 2008

Claimant Trustee Everett Ross signed the Submission Agreement: June 20, 2008

Claimant I. Ross signed the Submission Agreement: June 20, 2008

Claimant Trustee Imogene Ross signed the Submission Agreement: June 20, 2008

Statement of Answer filed by Respondent on or about: August 18, 2008

FINRA Dispute Resolution Arbitration No. 08-02082 Award Page 2 of 5

Respondent signed the Submission Agreement: July 1, 2008

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary duty, breach of a written contract, constructive fraud, fraud by misrepresentation and omission, negligence, respondeat superior, negligent supervision and, violations of California Securities Act. The causes of action relate to transactions in the Schwab YieldPlus Fund.

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. Compensatory damages according to proof, but not less than \$318,947.00;
- 2. Unspecified lost opportunity costs;
- 3. Costs:
- 4. Unspecified punitive damages;
- 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 this Panel deems just and appropriate.

At the close of the hearing, Claimants requested damages of \$432,189.00.

In its Answer, Respondent requested:

- 1. The dismissal of Claimants' claims in their entirety;
- 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.

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.

<u>AWARD</u>

After considering the pleadings, and 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 for and shall pay Trustee Imogene Ross compensatory

FINRA Dispute Resolution Arbitration No. 08-02082 Award Page 3 of 5

damages of \$157,498.00.

- 2. Respondent is liable for and shall pay all Claimants \$16,000.00 in expert witness fees.
- 3. Respondent is liable for and shall pay all Claimants \$300.00 as reimbursement of the non-refundable filing fee.
- 4. Claimants' request for Interest is denied.
- 5. Claimants' request for attorneys' fees is denied.
- 6. Any and all relief not specifically addressed herein, including 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

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

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 sessi	on with a single	arbitrator @ \$450.00/session	= \$	450.00
Pre-hearing conference:	May 28, 2009	1 session		

One (1) Pre-hearing sess	ion with Panel @ \$1,125.00/sessio	n = \$ 1,125.00
	October 23, 2008 1 session	

Seven (7) Hearing sessions @ \$1,125.00/session			= \$ 7,875.00
Hearing Dates:	June 16, 2009	2 sessions	

earing Dates: June 16, 2009 2 sessions

June 17, 2009 2 sessions

^{*}The filing fee is made up of a non-refundable and a refundable portion.

FINRA Dispute Resolution Arbitration No. 08-02082 Award Page 4 of 5

 June 18, 2009
 2 sessions

 June 19, 2009
 1 session

 Total Hearing Session Fees
 = \$9,450,00

1. The Panel has assessed \$9,450.00 of the hearing session fees to Respondent.

FINRA DR

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

FINRA Dispute Resolution Arbitration No. 08-02082 Award Page 6 of 5

ARBITRATION PANEL

Kevin K. Forrester

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Nancy J. Spleczny James H. Fehlberg, CFP

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Public Arbitrator

James H. Fehlberg, CFP Non-Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Kevin K. Forrester

Public Arbitrator, Presiding Chairperson

Signature Date

Date of Service (For FINRA Dispute Resolution use only)

FINRA Dispute Resolution Arbitration No. 08-02082 Award Page 5 of 5

ARBITRATION PANEL

Kevin K. Forrester

Public Arbitrator, Presiding Chairperson

Nancy J. Spieczny

Public Arbitrator

James H. Fehlberg, CFP -

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Nancy J. Spleczny Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

Kevin K. Forrester

Public Arbitrator, Presiding Chalrperson

Signature Date

Date of Service (For FINRA Dispute Resolution use only)

FINRA Dispute Resolution Arbitration No. 08-02082 Award Page 5 of 5

ARBITRATION PANEL

Kevin K. Forrester

Public Arbitrator, Presiding Chairperson

Nancy J. Spieczny

Public Arbitrator

James H. Fehlberg, CFP -

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Nancy J. Spieczny Public Arbitrator Signature Date

James H. Fehlberg, CFP Non-Public Arbitrator Signature Date

Dissenting Arbitrator's Signature

Kevin K. Forrester

Public Arbitrator, Presiding Chairperson

Signature Date

Date of Service (For FINRA Dispute Resolution use only)