

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

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In the Matter of the Arbitration Between:

Claimant

David Cummings, as Durable Power of Attorney for  
Shirley Gay Cummings

Case Number: 19-01172

vs.

Respondent

Charles Schwab & Co., Inc.

Hearing Site: Denver, Colorado

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customer vs. Member

This case was decided by an all-public panel.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

For Claimant David Cummings, as Durable Power of Attorney for Shirley Gay Cummings (“Claimant”): Eric B. Liebman, Esq., Moye White LLP, Denver, Colorado.

For Respondent Charles Schwab & Co., Inc. (“Respondent”): Kevin H. Lewis, Esq., Charles Schwab & Co., Inc., San Francisco, California; and Igor V. Stadnik, Esq., Keesal Young & Logan, Seattle, Washington.

**CASE INFORMATION**

Statement of Claim filed on or about: April 26, 2019.

Addendum to the Statement of Claim filed on or about: May 6, 2019.

Claimant signed the Submission Agreement: May 9, 2019.

Statement of Answer filed by Respondent on or about: July 19, 2019.

Respondent signed the Submission Agreement: July 19, 2019.

### **CASE SUMMARY**

In the Statement of Claim and Addendum to the Statement of Claim, Claimant asserted the following causes of action: suitability, violation of FINRA Rule 2090, and negligence. The causes of action relate to unspecified equity investments.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Damages to be proven at hearing;
2. Pre-judgment and post-judgment interest; and
3. All other relief the Panel deems just.

In the Addendum to the Statement of Claim, Claimant requested:

1. Compensatory damages in the amount of \$547,721.17;
2. Pre-judgment and post-judgment interest; and
3. All other relief the Panel deems just.

In the Statement of Answer, Respondent requested:

1. Dismissal of Claimant's Statement of Claim in its entirety;
2. Forum fees and costs; and
3. Such further relief as the Arbitrators deem just and proper.

At the hearing, Claimant requested \$420,609.00.

### **OTHER ISSUES CONSIDERED AND DECIDED**

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

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

1. Claimant's claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein are denied.

**FEES**

Pursuant to the Code of Arbitration Procedure (“Code”), the following fees are assessed:

**Filing Fees**

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

Initial Claim Filing Fee = \$ 1,725.00

*\*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 event giving rise to the dispute. Accordingly, as a party, Respondent Charles Schwab & Co., Inc. is assessed the following:

Member Surcharge = \$ 2,475.00  
Member Process Fee = \$ 5,075.00

**Contested Motion for Issuance of 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 = \$ 200.00  
with one Arbitrator @ \$200.00

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

The Panel has assessed the total contested motion for issuance of subpoena fees to Claimant.

**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), which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with the Panel @ \$1,300.00/session = \$ 2,600.00  
Pre-Hearing Conferences: August 28, 2019 1 session  
May 19, 2020 1 session

Eight (8) hearing sessions @ \$1,300.00/session = \$ 10,400.00  
Hearings: January 12, 2021 2 sessions  
January 13, 2021 2 sessions  
January 14, 2021 2 sessions  
February 18, 2021 2 sessions

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Total Hearing Session Fees = \$ 13,000.00

The Panel has assessed \$6,500.00 of the hearing session fees to Claimant.

The Panel has assessed \$6,500.00 of the hearing session fees to Respondent.

**ARBITRATION PANEL**

Steven Meyrich	-	Public Arbitrator, Presiding Chairperson
Michael F. Jordan	-	Public Arbitrator
Barry A. Fisher	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**

***Steven Meyrich***

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Steven Meyrich  
Public Arbitrator, Presiding Chairperson

**03/03/2021**

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

***Michael F. Jordan***

\_\_\_\_\_  
Michael F. Jordan  
Public Arbitrator

**03/03/2021**

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

***Barry A. Fisher***

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Barry A. Fisher  
Public Arbitrator

**03/03/2021**

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

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March 04, 2021

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Date of Service (For FINRA Dispute Resolution Services use only)