

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Charles Schwab & Co., Inc.

Case Number: 19-01296

vs.

Respondent
Ronald Todd Behymer

Hearing Site: Memphis, Tennessee

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: Member vs. Associated Person

REPRESENTATION OF PARTIES

For Claimant Charles Schwab & Co., Inc. (“Claimant”): Michael R. Greco, Esq., Fisher & Phillips LLP, Denver, Colorado.

For Respondent Ronald Todd Behymer (“Respondent”): Niel Prosser, Esq. and Kyle Johnson, Esq., Prosser Law Firm, Memphis, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: May 8, 2019.
Answer to Counterclaim filed on or about: August 30, 2019.
Claimant signed the Submission Agreement: May 8, 2019.

Statement of Answer and Counterclaim filed on or about: July 13, 2019.
First Amended Answer and Counterclaim filed on or about July 22, 2019.
Respondent signed the Submission Agreement: July 12, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract and misappropriation of trade secrets. The causes of action relate to a confidentiality and non-solicitation agreement signed by Respondent.

In the Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim, asserted various affirmative defenses and asserted tortious interference as a cause of action.

In the Amended Statement of Answer and Counterclaim, Respondent added intentional infliction of emotional distress as a cause of action.

In the Answer to Counterclaim, Claimant denied the allegations made in the Answer to the Amended Statement of Answer and Counterclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. An injunction, enjoining Respondent for a time period to be determined by the Panel, directly or indirectly, and whether alone or in concert with others (including any new employer), from soliciting any business from, or initiating any further contact or communication with, any customer of Claimant whom Respondent serviced at Claimant, and/or any customers or prospective customers whose identities Respondent learned as a result of his employment with Claimant;
2. An injunction, enjoining Respondent, directly or indirectly, and whether alone or in concert with others (including any new employer), from using, disclosing, or transmitting for any purpose, including the solicitation or conducting of business or initiation of contact with customers, the information contained in the records of Claimant, or other information pertaining to the customers, including, but not limited to, the names, addresses, email addresses, telephone numbers, personal data and financial information of the customers (excluding members of Respondent's immediate family and any customers who have signed a form authorizing their account to be serviced by Respondent at another financial services firm), even if such information is or was recreated by Respondent in whole or in part from memory;
3. An injunction ordering Respondent, and anyone acting in concert or participation with him (including any new employer), to return to Claimant and/or purge from their possession, custody and control any and all records or information pertaining to Claimant's customers, whether in original, copied, computerized, handwritten or any other form (excluding members of Claimant's immediate family and any customers who have signed account transfer forms);
4. Compensatory damages, unjust enrichment damages, royalty damages, and/or lost profits as permitted under the TUTSA and DTSA to compensate for harm caused by Respondent's actions;
5. Liquidated damages as set forth in Respondent's agreement;
6. Attorneys' fees and costs pursuant to Respondent's agreement and pursuant to statute, including but not limited to all FINRA fees, in addition to costs of any experts or other out of pocket costs borne by Claimant in the prosecution of this action;
7. Punitive and exemplary damages pursuant to statute (TUTSA and DTSA) and as permitted by law; and
8. Any other or further relief the Panel deems just and proper.

In the Statement of Answer and Counterclaim, Respondent requested:

1. Compensatory damages;
2. Punitive damages;
3. Attorney's fees, costs and forum fees; and
4. Any other additional/different relief including the complete expungement of his disciplinary/regulatory record.

In the Amended Statement of Answer and Counterclaim, Respondent requested:

1. Compensatory damages;
2. Attorney's fees, expenses and costs incurred in this action;
3. Attorney's fees, expenses and costs incurred in responding to regulators because of his Form U5 language;
4. Pre-judgment interest, compounded at the maximum statutory rate, on all damages from the date sustained until the date of the Award and, thereafter, at the maximum post judgment rate allowed by law;
5. Punitive damages for each act of tortious interference proved at trial;
6. Treble damages under T.C.A. § 47-50-109;
7. Expungement of Respondent's regulatory and disciplinary record contained in the CRD or otherwise, including, but not limited to, Respondent's Form U5;
8. Reimbursement of all FINRA fees paid by Respondent and assessment of all other FINRA fees to Claimant; and
9. Such other, different or additional relief and damages which the Panel deems just and equitable.

In the Answer to the Counterclaim, Claimant requested:

1. Costs and attorney's fees; and
2. Such other relief as the arbitrators determine to be just and proper.

During the hearing, Respondent requested final damages of \$4,579,717.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On March 18, 2021, Respondent filed a Motion for Discovery Sanctions. On March 29, 2021, Claimant filed its opposition to Respondent's Motion for Discovery Sanctions. On April 6, 2021, Respondent filed his reply in Support of Discovery Sanctions. By Order dated April 26, 2021, the Panel ordered Claimant to produce documents, and pay attorneys' fees and costs to Respondent. The Panel ordered Respondent to submit a detailed affidavit itemizing the fees and costs associated with bringing the motion.

On April 30, 2021, Respondent filed a fee affidavit. On May 11, 2021, Claimant filed its opposition to Respondent's fee affidavit and on May 17, 2021, Respondent filed his response. On May 27, 2021, the Panel ordered Claimant to pay Respondent \$4,540.00 in attorneys' fees within 30 days of the Order.

During the hearing, Claimant and Respondent moved for directed verdict/dismissal. Each motion was denied.

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. Respondent’s Counterclaim is denied in its entirety.
3. Respondent’s request for expungement of his Form U5 is denied.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, 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	= \$	1,700.00
Counterclaim Filing Fee	= \$	1,575.00

**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, Claimant is assessed the following:

Member Surcharge	= \$	1,900.00
Member Process Fee	= \$	3,750.00

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 the Panel @ \$600.00/decision	= \$	600.00
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Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$	600.00
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The Panel has assessed \$300.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$300.00 of the discovery-related motion 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 Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Four (4) pre-hearing sessions with a single Arbitrator @ \$450.00/session	= \$	1,800.00
Pre-Hearing Conferences: March 30, 2020	1 session	
July 1, 2020	1 session	
August 10, 2020	1 session	
August 17, 2020	1 session	
Five (5) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	5,625.00
Pre-Hearing Conferences: September 4, 2019	1 session	
October 2, 2020	1 session	
October 23, 2020	1 session	
April 19, 2021	1 session	
May 24, 2021	1 session	
Thirty (30) hearing sessions with the Panel @ \$1,125.00/session	= \$	33,750.00
Hearings:		
July 12, 2021	2 sessions	
July 13, 2021	2 sessions	
July 14, 2021	2 sessions	
July 15, 2021	2 sessions	
July 16, 2021	1 session	
July 19, 2021	2 sessions	
July 20, 2021	2 sessions	
July 21, 2021	3 sessions	
July 22, 2021	2 sessions	
July 23, 2021	1 session	
July 26, 2021	3 sessions	
July 27, 2021	3 sessions	
July 28, 2021	3 sessions	
July 29, 2021	2 sessions	

Total Hearing Session Fees = \$ 41,175.00

The Panel has assessed \$20,587.50 of the hearing session fees to Claimant.

The Panel has assessed \$20,587.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Robert Stewart Barney	-	Public Arbitrator, Presiding Chairperson
Kenneth R. Starr	-	Public Arbitrator
Chirag Dinesh Chauhan	-	Non-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

Robert Stewart Barney

Robert Stewart Barney
Public Arbitrator, Presiding Chairperson

08/11/2021

Signature Date

Kenneth R. Starr

Kenneth R. Starr
Public Arbitrator

08/10/2021

Signature Date

Chirag Dinesh Chauhan

Chirag Dinesh Chauhan
Non-Public Arbitrator

08/10/2021

Signature Date

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August 12, 2021

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