

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
PGPG LLC

Case Number: 19-01459

vs.

Respondents
Charles Schwab & Co., Inc.
Charles Schwab Futures, Inc.

Hearing Site: Los Angeles, California

vs.

Third-Party Respondents
Abraham Chessed
Yehuda Avganim
Alex Safahi

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 and Non-Member

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant PGPG, LLC (“Claimant”): Jeffrey N. Goldberg, Esq., The Law Offices of Jeffrey N. Goldberg, P.C., Los Angeles, California*.

For Respondents Charles Schwab & Co., Inc. (“Charles Schwab”) and Charles Schwab Futures, Inc. (“Charles Schwab Futures”): Joseph L. Siders, Esq., Charles Schwab & Co., Inc., Chicago, Illinois.

Hereinafter, Charles Schwab and Charles Schwab Futures are collectively referred to as “Respondents”.

For Third-Party Respondent Alex Safahi (“Safahi”): Scott M. Malzahn, Esq., Baker Marquart LLP, Los Angeles, California.

For Third-Party Respondents Yehuda Avganim (“Avganim”) and Abraham Chesed (“Chesed”): Jeffrey N. Goldberg, Esq., The Law Offices of Jeffrey N. Goldberg, P.C., Los Angeles, California.

*FINRA recorded the appearance of Claimant’s counsel at the time of filing of the Statement of Claim. Counsel’s representation of Claimant may have ended with the parties’ settlement. Please see the Other Issues Considered and Decided section of this Award for information on whether Claimant’s counsel appeared at the expungement hearing.

CASE INFORMATION

Statement of Claim filed on or about: May 24, 2019.

Amended Statement of Claim filed on or about: April 14, 2020.

Answer to Respondents’ Counterclaim filed by Claimant on or about: January 10, 2020.

Answer to Safahi’s Crossclaim filed by Claimant, Avganim, and Chesed on or about November 26, 2019.

Claimant signed the Submission Agreement: May 22, 2019.

Avganim and Chesed signed the Submission Agreement: November 26, 2019.

Statement of Answer, Counterclaim, and Crossclaim filed by Respondents on or about: August 20, 2019.

Amended Statement of Answer, Counterclaim, and Crossclaim by Respondents on or about: April 15, 2020.

Respondents signed the Submission Agreement: August 15, 2019.

Statement of Answer and Crossclaim filed by Safahi on or about October 4, 2019.

Safahi signed the Submission Agreement: October 4, 2019.

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimant asserted the following causes of action against Respondents: failure to supervise; breach of contract; breach of the covenant of good faith and fair dealing; breach of fiduciary duty; fraud; negligent misrepresentation; unfair business acts or practices; unlawful business acts or practices; and fraudulent business acts or practices. Claimant also asserted selling away as an additional cause of action against Charles Schwab. The causes of action relate to unspecified securities in investment accounts maintained by Respondents.

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

In their Counterclaim and Amended Counterclaim, Respondents asserted breach of contract as the cause of action against Claimant. The cause of action relates to alleged breach of contractual promises made by Claimant.

Unless specifically admitted in the Answer to Respondents' Counterclaim, Claimant denied the allegations made in Respondents' Counterclaim and Amended Counterclaim and asserted various affirmative defenses.

In their Crossclaim and Amended Crossclaim, Respondents asserted breach of contract and indemnity as the cause of action against Safahi. The cause of action relates to alleged breach of contractual promises made by Safahi.

Unless specifically admitted in the Answer to Respondents' Crossclaim, Safahi denied the allegations made in Respondents' Crossclaim and asserted various affirmative defenses.

In his Crossclaim against Claimant, Chesed, and Avganim, Safahi asserted the following causes of claim: breach of written contract and breach of implied covenant of good faith and fair dealing. The causes of action relate to alleged breach of contractual obligations under the settlement agreement made among Claimant, Chesed, Avganim, and Safahi.

In their Answer to Safahi's Crossclaim, Claimant, Avganim, and Chesed denied the allegations made in the Crossclaim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Compensatory damages in excess of \$2.5 million according to proof at arbitration;
2. Punitive damages;
3. Restitution for all fees, commissions and margin interest paid by Claimant to Respondents;
4. Reimbursement for all FINRA fees paid or to be paid by Claimant, including filing fees, arbitrator fees, and other forum fees;
5. Reimbursement for all costs and expenses incurred by Claimant herein;
6. Pre-award and post-award interest at the statutory legal rate of 10%; and
7. Such other and further relief as the Panel deems just and equitable.

In the Amended Statement of Claim, Claimant additionally requested for attorneys' fees and costs.

In the Statement of Answer, Counterclaim, and Crossclaim and Amended Statement of Answer, Counterclaim, and Crossclaim, Respondents requested:

1. Dismissal of the claim in its entirety;
2. An award in Respondents' favor against Claimant for their costs and forum fees, as proven at the hearing of this matter;
3. An award, consistent with FINRA Rule 2080, recommending expungement of all references to this arbitration from Unnamed Party Ryan James Halvorsen's ("Halvorsen") Central Registration Depository ("CRD") records and Form U-4;
4. An award in Respondents' favor against Safahi in accordance with the parties' contractual agreement; and
5. Such other relief as provided by law.

In the Answer to Respondents' Counterclaim, Claimant requested:

1. Dismissal of Respondents' counterclaim with prejudice;
2. An award for attorneys' fees in this arbitration pursuant to the lodestar method in accordance with Section 1717 of the California Civil Code and other applicable law and equitable principles;
3. Assessment of all forum and other fees in this arbitration against Respondents;
4. Pre-award and post-award interest at the statutory legal rate of 10%; and
5. Such further relief as the Panel deems just and proper.

In his Statement of Answer and Crossclaim against Claimant; Chesed; and Avganim, Safahi requested:

1. Dismissal of Respondents' crossclaim against Safahi in its entirety;
2. A finding Claimant, Chesed, and Avganim breached the settlement agreement with Safahi, including the non-disparagement clause;
3. An award in Safahi's favor against Claimant, Chesed, and Avganim for Safahi's damages as a result of the breaches of the settlement agreement and the resulting disparagement, as proven at the hearing of this matter;
4. An award in Safahi's favor for compensatory and punitive damages for violating the covenant of good faith and fair dealing;
5. An award in Safahi's favor against Claimant, Chesed, and Avganim and/or Respondents for Safahi's attorneys' fees, costs, and forum fees, as proven at the hearing of this matter;
6. An order for specific performance and/or an interim, interlocutory, preliminary and permanent injunction to enforce compliance with the settlement agreement and to require Claimant, Chesed, and Avganim to cease and desist from making disparaging allegations and negative statements about Safahi;
7. Pre-award and post-award interest at the statutory legal rate of 10%; and
8. Such other relief as is provided by law.

In their Answer to Safahi's Crossclaim, Claimant, Avganim, and Chesed requested:

1. That Safahi take nothing by way of his crossclaim against Claimant, Avganim, and Chesed in this action and that his crossclaim be denied and dismissed with prejudice;
2. An award of attorneys' fees, costs, and expenses pursuant to the settlement agreement previously entered into by Claimant, Avganim, Chesed, and Safahi;
3. Allocation of all forum and other fees relating to the crossclaim to Safahi;
4. Pre-award and post-award interest at the statutory legal rate of 10%; and
5. Such further relief as the Panel deems just and proper.

Respondent filed a request for expungement, on behalf of Unnamed Party Ryan James Halvorsen, of all references to this matter from his Central Registration Depository ("CRD") registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

OTHER ISSUES CONSIDERED AND DECIDED

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

On October 29, 2019, Respondents filed a Motion to Amend their Statement of Answer. On November 8, 2019, Claimant filed its opposition to the motion. On November 13, 2019, Respondents filed their reply in support of the Motion to Amend. On December 10, 2019, the Panel granted the motion.

On February 20, 2020, Claimant filed a Motion to Amend the Statement of Claim. On February 28, 2020, Respondents filed their opposition to the motion. On March 4, 2020, Claimant filed its reply in support of the Motion to Amend. On April 2, 2020, the Panel granted the motion.

On December 10, 2020, Respondents filed a notice of settlement with Safahi and dismissed their crossclaim against Safahi with prejudice. On the same day, Safahi filed a letter withdrawing his crossclaim against Claimant, Avganim, and Chesed.

On March 24, 2021, Claimant filed a notice of settlement with Respondents and dismissed its claim against Respondents with prejudice. Therefore, the Panel made no determination with respect to any of the relief requests contained in the Statement of Claim.

On April 7, 2021, Respondents filed a Motion for Expungement on behalf of Halvorsen, in which no response was made.

The Panel conducted a recorded, telephonic hearing on May 27, 2021, so the parties could present oral argument and evidence on Halvorsen's request for expungement.

Claimant did not participate in the expungement hearing. The Panel noted that Claimant did not oppose the request for expungement.

The Panel reviewed Halvorsen's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

The Panel also reviewed the settlement documentation, considered the amount of payment made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Panel noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Halvorsen did not contribute to the settlement amount.

In recommending expungement, the Panel relied upon the following documentary or other evidence: pleadings; exhibits; the settlement agreement and Halvorsen's testimony.

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:

The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2037135) from registration records maintained by the CRD

for Unnamed Party Ryan James Halvorsen (CRD Number 4533150) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Ryan James Halvorsen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure (“Code”), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

First, Claimant, PGPG, LLC, a limited liability company (“PGPG”), alleged that it was introduced to Mr. Halvorsen by its unidentified third-party “Investment Manager” (presumably, Alex Safahi), and that Mr. Halvorsen induced Claimant to open accounts and facilitated the Investment Manager’s provision of investment advisory and trading services to Claimant. These allegations are false. *Motion for Expungement on Behalf of Ryan J. Halvorsen (Motion)*, at 6. PGPG’s members are sophisticated and accomplished businesspeople, and there is no factual support for the allegation they were induced by Mr. Halvorsen. *Id.* Discovery revealed PGPG willfully opened accounts at Schwab as an alternative in case something happened at its other brokerage firm (where PGPG also allowed Mr. Safahi to trade – on an undisclosed basis); Mr. Halvorsen did not induce PGPG to do so. *Id.* Further, there is no basis for the allegation that Mr. Halvorsen and Mr. Safahi conspired. *Id.* In fact, the evidence shows that PGPG and Mr. Safahi had a relationship which pre-existed PGPG even meeting Mr. Halvorsen; from March-July 2017, PGPG and Mr. Safahi negotiated an Investment Management Agreement between PGPG and one of Mr. Safahi’s companies, Safahi Capital Management. *Id.* Both PGPG and Mr. Safahi were represented by counsel. *Id.* Neither PGPG nor Mr. Safahi ever revealed the existence of the Investment Management Agreement to Schwab or Mr. Halvorsen. *Id.* Mr. Safahi provided investment management services to PGPG long before PGPG opened its accounts with Schwab. *Id.*, at 7.

Second, PGPG alleged that Mr. Halvorsen made unspecified misrepresentations to PGPG and “sold away” investment management services. *Motion*, at 7. Discovery indicated that those allegations are false as well. *Id.* The only “misrepresentation” alleged in PGPG’s claim was an alleged statement by Mr. Safahi, not Mr. Halvorsen. Claim at ¶ 7. Further, there is no basis for the allegation that Mr. Halvorsen “sold away” anything – as noted above, PGPG’s relationship with Mr. Safahi pre-existed its relationship with Schwab and Mr. Halvorsen. *Motion*, at 7. Mr. Halvorsen stated that Mr. Safahi was always a self-directed client who had an account at Schwab for 20 years or more. None of the trading activity in question occurred away from Schwab. *Id.* And PGPG and Mr. Safahi expressly misrepresented the true nature of their relationship to Schwab. *Id.* PGPG and Mr. Safahi told Schwab that Mr. Safahi was not being compensated. Discovery revealed that representation was false, but Mr. Halvorsen and Schwab did not know as much. *Id.* Significantly and tellingly, PGPG agreed to pay

\$75,000 to Schwab to resolve this matter. *Id.* Mr. Halvorsen has not been found to have engaged in any misconduct, and discovery revealed that PGP and Mr. Safahi misrepresented the nature of their relationship to Schwab and Mr. Halvorsen. *Id.*

The Motion for Expungement, supporting documentation therefor, the extensive discovery that took place during the course of this arbitration, as well as Mr. Halvorsen's testimony at the hearing, have provided overwhelming evidence that the disclosure on Mr. Halvorsen's CRD records relating to the PGP matter is the result of a customer arbitration which involves claims against him that are false.

Therefore, this Motion for Expungement is granted, and an Award is issued recommending that Occurrence Number 2037135 be expunged from the records of Ryan James Halvorsen (CRD Number 4533150), that are maintained and published by FINRA's CRD.

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	= \$	2,000.00
Safahi Cross Claim Filing Fee	= \$	1,575.00
Respondents Counterclaim/Third Party Filing Fee	= \$	3,400.00

**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(s) giving rise to the dispute. Accordingly, as a party, Charles Schwab is assessed the following:

Member Surcharge	= \$	3,025.00
Member Process Fee	= \$	6,175.00

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

June 15-19, 2020, postponement requested by Safahi	= \$	1,400.00
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Total Postponement Fees	= \$	1,400.00

The Panel has assessed \$700.00 of the postponement fees to Claimant.

The Panel has assessed \$700.00 of the postponement fees to Respondents.

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 three (3) Arbitrators @ \$600.00/decision = \$ 600.00

Respondent Safahi submitted One (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 600.00

The Panel has assessed the total discovery-related motion fees to Respondent Safahi.

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 with one Arbitrator @ \$200.00 = \$ Waived

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:

Nine (9) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 12,600.00

Pre-Hearing Conferences: October 25, 2019 1 session
December 10, 2019 1 session
January 6, 2020 1 session
March 30, 2020 1 session
May 11, 2020 1 session
July 7, 2020 1 session
July 16, 2020 1 session
July 31, 2020 1 session
November 6, 2020 1 session

One (1) hearing session on expungement request @ \$1,400.00/session = \$ 1,400.00

Hearing: May 27, 2021 1 session

Total Hearing Session Fees = \$ 14,000.00

The Panel has assessed \$7,816.66 of the hearing session fees to Claimant.

The Panel has assessed \$3,500.00 of the hearing session fees jointly and severally to Respondents.

The Panel has assessed \$466.66 of the hearing session fees jointly and severally to Avganim, Chesed, and Safahi.

The Panel has assessed \$350.00 of the hearing session fees to Safahi.

The Panel has assessed \$1,866.66 of the hearing session fees to Charles Schwab.

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

ARBITRATION PANEL

Olivia J. Valentine	-	Public Arbitrator, Presiding Chairperson
Michael R. Diliberto	-	Public Arbitrator
Brenda Lee James	-	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

Olivia J. Valentine

Olivia J. Valentine
Public Arbitrator, Presiding Chairperson

07/07/2021

Signature Date

Michael R. Diliberto

Michael R. Diliberto
Public Arbitrator

07/06/2021

Signature Date

Brenda Lee James

Brenda Lee James
Public Arbitrator

07/07/2021

Signature Date

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.

July 15, 2021

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