

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant

Robert E. Mangine, Jr.

Case Number: 20-01582

vs.

Respondents

Charles Schwab & Co., Inc. and
James F. Albert

Hearing Site: Cincinnati, Ohio

and

Third-Party Claimant

Charles Schwab & Co., Inc.

vs.

Third-Party Respondent

Chemed Corporation

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 Associated Person
Member vs. Non-Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Robert E. Mangine, Jr. (“Claimant”): Richard S. Wayne, Esq. and Jeffrey A. Levine, Esq., Strauss Troy Co., LPA, Cincinnati, Ohio.*

For Respondents Charles Schwab & Co., Inc. (“Charles Schwab”) and James Franklin Albert (“Albert”) (collectively, “Respondents”): Kevin H. Lewis, Esq. and David Monsour, Esq., Charles Schwab & Co., Inc., San Francisco, California.

For Third-Party Respondent Chemed Corporation (“Chemed”): Brian C. Judkins, Esq., Chemed Corporation, Cincinnati, Ohio.

*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 19, 2020.

Claimant signed the Submission Agreement: May 18, 2020.

Statement of Answer and Third-Party Claim filed on or about: July 10, 2020.

Albert signed the Submission Agreement: July 10, 2020.

Charles Schwab signed the Submission Agreement: July 16, 2020.

Statement of Answer to the Third-Party Claim filed on or about: August 20, 2020.

Chemed signed the Submission Agreement: September 16, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract, breach of fiduciary duty, negligence, respondeat superior, and negligent supervision. The causes of action relate to Claimant's allegation that Albert provided negligent advice in regard to Claimant's request to verify his employee stock options in Chemed and failed to timely advise Claimant that the stock options were not merely verified but had been exercised, which resulted in Claimant suffering monetary damages.

Unless specifically admitted in the Statement of Answer and Third-Party Claim, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Charles Schwab asserted the following causes of action: breach of contract, negligence, and contractual indemnification. The causes of action relate to Charles Schwab's allegation that Chemed breached the Chemed User Agreement by providing inaccurate information to Charles Schwab.

Unless specifically admitted in the Statement of Answer, Chemed denied the allegations made in the Third-Party Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested total damages in excess of \$85,000.00 and any such other relief as the Arbitrator deems appropriate, including, but not limited to, exemplary damages, attorneys' fees, and other costs of this proceeding.

In the Statement of Answer and Third-Party Claim, Respondents requested dismissal of Claimant's Statement of Claim in its entirety; an award in favor of Charles Schwab against Chemed based on the claims asserted, to the extent that any amount is awarded to Claimant; forum fees and costs incurred in connection with prosecution of the Third-Party Claim; and such further relief as the Arbitrator deems just and proper. Further, Respondents requested expungement of all references to this matter from Albert's registration records maintained by the Central Registration Depository ("CRD").

In the Statement of Answer to the Third-Party Claim, Chemed requested that the Third-Party Claim be dismissed with prejudice, its costs and attorneys' fees incurred in defending this action, and all relief to which it may otherwise be entitled.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On August 20, 2020, Chemed filed a Motion to Dismiss Charles Schwab's Third-Party Claim ("Motion to Dismiss"), pursuant to Rule 12504 of the Code of Arbitration Procedure ("Code"). On October 2, 2020, Charles Schwab filed an Opposition to the Motion to Dismiss. On October 14, 2020, Chemed filed a Reply in Support of the Motion to Dismiss. On October 26, 2020, the Arbitrator heard oral arguments on the Motion to Dismiss and other matters. In an Order dated the same day, the Arbitrator noted that the parties had reached a tentative settlement on all issues and rescheduled oral arguments on the Motion to Dismiss.

On November 27, 2020, Charles Schwab filed a notice of voluntary dismissal of the Third-Party Claim with prejudice. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Third-Party Claim.

On December 10, 2020, Claimant filed a notice of settlement and withdrawal of claims with prejudice. Therefore, the Arbitrator made no determination with respect to any of the relief requests contained in the Statement of Claim.

On January 4, 2021, Respondents filed a Motion for Expungement, to which no response was filed.

The Arbitrator conducted a recorded hearing by videoconference on January 20, 2021, so the parties could present oral argument and evidence on the request for expungement.

Neither Claimant nor Claimant's counsel participated in the expungement hearing.

The Arbitrator reviewed the BrokerCheck® Report for Albert. The Arbitrator noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in CRD.

The Arbitrator also reviewed the settlement documents, considered the amount of payments made to any party to the settlement, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on any party to the settlement not opposing the request for expungement and that Albert did not contribute to the settlement amount.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Albert's testimony and Respondents' Exhibits A-I.

AWARD

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

1. The Arbitrator recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2068362) from registration records maintained by the CRD for Respondent James Franklin Albert (CRD Number 6109337) with the understanding that, pursuant to Notice to Members 04-16, Respondent James Franklin Albert 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, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

The claim, allegation, or information is false.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

The sworn testimony of Albert, which the Arbitrator finds credible, and the exhibits presented established by a preponderance of the evidence that Claimant's allegations are false, factually impossible, and clearly erroneous. When asked by Claimant, Albert provided accurate information in regard to the process necessary to verify and exercise his Chemed stock options; no advice in regard to a decision to exercise the options was provided, and no loss resulted from providing this information. Claimant sent the letter to Chemed, exercising the stock options, on his own.

2. Any and all claims for relief not specifically addressed herein are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$	975.00
Third Party Filing Fee	= \$	1,750.00

**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Charles Schwab is assessed the following:

Member Surcharge	= \$	1,100.00
Member Process Fee	= \$	2,250.00

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions @ \$450.00/session	= \$	1,350.00
Pre-hearing Conferences: September 30, 2020	1 session	
October 26, 2020	1 session	
November 20, 2020	1 session	
One (1) hearing session on expungement request @ \$450.00/session	= \$	450.00
Hearing Date: January 20, 2021	1 session	
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Total Hearing Session Fees	= \$	1,800.00

The Arbitrator has assessed \$225.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$562.50 of the hearing session fees jointly and severally to Respondents.

The Arbitrator has assessed \$562.50 of the hearing session fees to Chemed.

The Arbitrator has assessed \$450.00 of the hearing session fees to Albert.

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

ARBITRATOR

Robert J. Scafuri

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Sole 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.

Arbitrator's Signature

Robert J. Scafuri

Robert J. Scafuri
Sole Public Arbitrator

02/05/2021

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.

February 05, 2021

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