

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Matthew Nekuza

Case Number: 20-03365

vs.

Respondent
Charles Schwab & Co., Inc.

Hearing Site: Dallas, Texas

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.

REPRESENTATION OF PARTIES

For Claimant Matthew Nekuza (“Claimant”): N. Henry Simpson, III, Esq. and Robert Ruotolo, Esq., Busch Ruotolo & Simpson LLP, Dallas, Texas.

For Respondent Charles Schwab & Co., Inc. (“Respondent”): Anthony L. Valenzuela, Esq., Charles Schwab & Co., Inc., San Francisco, California.

CASE INFORMATION

Statement of Claim filed on or about: September 28, 2020.
Claimant signed the Submission Agreement: September 18, 2020.

Statement of Answer and Counterclaim filed on or about: December 7, 2020.
Respondent signed the Submission Agreement: December 7, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of contract, breach of implied warranty of merchantability, and negligence. The causes of action related to Claimant’s allegations that he suffered a loss due to the complete inaccessibility of Respondent’s trading platform and that the loss in value to his account put him in a margin debt position. Among the securities involved were Claimant’s options in ProShares UltraPro QQQ (TQQQ).

Unless specifically admitted in the Statement of Answer and Counterclaim, Respondent denied the allegations made in the Statement of Claim, asserted various affirmative defenses, and alleged that Claimant was liable for a debit caused when Respondent liquidated his option positions when the value of the positions declined significantly and fell below Respondent's minimum margin requirements.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested the Panel order appropriate relief to remedy Respondent's inappropriate conduct; award Claimant the full value of all damages sustained now or in the future as a result of Respondent's conduct; award Claimant all damages, interest, and attorneys' fees recoverable under applicable laws; award Claimant punitive damages, compensatory, and other damages; and award Claimant all other relief as the Panel deems just and proper.

In the Statement of Answer and Counterclaim, Respondent requested that Claimant's Statement of Claim be dismissed and Claimant be awarded nothing; that all of Respondent's forum and hearing fees be assessed solely to Claimant; that the Panel render an award requiring Claimant to pay \$43,256.00, the amount of Claimant's account debit caused by the March 12, 2020 liquidation; and that the Panel grant such further relief as it deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

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

At the evidentiary hearing, Respondent made an oral motion to dismiss, based on Claimant not meeting his burden of proof. Claimant opposed the motion. The Panel denied the oral motion to dismiss.

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. Claimant is liable for and shall pay to Respondent the sum of \$43,256.00 in compensatory damages.
3. Claimant is liable for and shall pay to Respondent the sum of \$50,000.00 in costs for expert witness fees.
4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, are denied.

FEES

Pursuant to the Code of Arbitration Procedure, 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
Counterclaim Filing Fee	=\$ 1,450.00

**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, Respondent is assessed the following:

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

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 one (1) Arbitrator @ \$200.00/decision	=\$ 200.00
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Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	=\$ 200.00
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The Panel has assessed the total 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:

One (1) pre-hearing session with the Panel @ \$1,300.00/session	=\$ 1,300.00
Pre-Hearing Conference: January 20, 2021 1 session	

Eight (8) hearing sessions @ \$1,300.00/session	=\$ 10,400.00
Hearings: November 2, 2021 2 sessions	
November 3, 2021 2 sessions	
November 4, 2021 2 sessions	
November 5, 2021 2 sessions	

Total Hearing Session Fees	=\$ 11,700.00
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The Panel has assessed \$5,850.00 of the hearing session fees to Claimant.

The Panel has assessed \$5,850.00 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Joseph Neal Richardson	-	Public Arbitrator, Presiding Chairperson
Joseph A. Vicario, Jr.	-	Public Arbitrator
Brandy Kearney Chambers	-	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

Joseph Neal Richardson

Joseph Neal Richardson
Public Arbitrator, Presiding Chairperson

11/10/2021

Signature Date

Joseph A. Vicario, Jr.

Joseph A. Vicario, Jr.
Public Arbitrator

11/10/2021

Signature Date

Brandy Kearney Chambers

Brandy Kearney Chambers
Public Arbitrator

11/10/2021

Signature Date

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November 11, 2021

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