

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Richard Dunstan
Perma-Chink Systems, Inc.
Richard Dunstan Contributory IRA
Richard Dunstan Roth Conversion IRA

Case Number: 20-03896

vs.

Respondents

Charles Schwab & Co., Inc.
Interactive Brokers LLC

Hearing Site: Seattle, Washington

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: Customers vs. Members

This case was decided by an all-public panel.

The evidentiary hearing was conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimants Richard Dunstan (“Dunstan”), Perma-Chink Systems, Inc. (“Perma-Chink”), Richard Dunstan Contributory IRA (“Dunstan Contributory IRA”), and Richard Dunstan Roth Conversion IRA (“Dunstan Roth Conversion IRA”): Mark C. Santi, Esq. and Steven M. Cerny, Esq., Santi Cerny, PLLC, Minneapolis, Minnesota.

Hereinafter, Dunstan, Perma-Chink, Dunstan Contributory IRA, and Dunstan Roth Conversion IRA will collectively be referred to as “Claimants”.

For Respondent Charles Schwab & Co., Inc. (“Charles Schwab”): Christopher A. Stecher, Esq. and Igor V. Stadnik, Esq., Keesal, Young & Logan, Seattle, Washington.

For Respondent Interactive Brokers LLC (“Interactive”): David Luger, Esq. and Christian T. Kemnitz, Esq., Katten, Muchin, Rosenman LLP, Chicago, Illinois.

Hereinafter, Charles Schwab and Interactive will collectively be referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: November 24, 2020.
Dunstan signed the Submission Agreement: November 4, 2020.
Perma-Chink signed the Submission Agreement: November 4, 2020.
Dunstan Contributory IRA signed the Submission Agreement: November 4, 2020.
Dunstan Roth Conversion IRA signed the Submission Agreement: November 4, 2020.

Statement of Answer filed by Interactive on or about: January 20, 2021.
Interactive signed the Submission Agreement: January 20, 2021.

Statement of Answer filed by Charles Schwab on or about: February 3, 2021.
Charles Schwab signed the Submission Agreement: February 1, 2021.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: violation of the Securities Act of Washington (RCW 21.20.010); negligence; violation of the Washington Consumer Protection Act (RCW 19.86.020); violations of section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10B-5; aiding and abetting breach of fiduciary duty; aiding and abetting common law fraud; violation of FINRA rules; and breach of contract. The causes of action relate to various unspecified securities.

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

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. Actual damages to be proven at the final hearing;
2. Treble damages;
3. Pre-judgment interest against Respondents or, in the alternative, well-invested portfolio damages;
4. Post-judgment interest at the applicable statutory rate;
5. Costs of the arbitration;
6. Attorneys' fees, see e.g. RCW 21.20.430 and RCW 19.86.090;
7. Punitive damages; and
8. Such other and further relief as the Panel deems just and equitable

In the Statement of Answer, Charles Schwab requested:

1. Dismissal of Claimants' Statement of Claim in its entirety;
2. Forum fees and costs; and
3. Such further relief as the Panel deems just and proper.

In the Statement of Answer, Interactive requested:

1. Claimants' claims be denied; and
2. Additional relief as the Panel deems just and proper.

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, and after Claimants' case in chief, Charles Schwab and Interactive separately filed Motions to Dismiss pursuant to Rule 12504 of the Code of Arbitration Procedure ("Code"). The Panel hereby denies the Motion to Dismiss as it relates to Interactive and grants the Motion to Dismiss as it relates to Charles Schwab on the grounds that Claimants failed to offer evidence of losses at Charles Schwab and failed to establish damages proximately caused by Charles Schwab.

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. Claimants' claims are denied in their entirety.
2. Any and all claims for relief not specifically addressed herein, including any requests for attorneys' fees, treble damages, and punitive damages, 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	= \$	1,575.00
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**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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, as parties, Respondents are each assessed the following:

Charles Schwab:

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

Interactive:

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

Postponement Fees

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

November 15-19, 2021, postponement requested by parties	= \$	1,125.00
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Total Postponement Fees	= \$	1,125.00

The Panel has assessed \$562.50 of the postponement fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the postponement fees jointly and severally to Respondents.

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 a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: October 19, 2021	1 session	
Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Pre-Hearing Conferences: March 25, 2021	1 session	
January 21, 2022	1 session	
February 7, 2022	1 session	
Fourteen (14) hearing sessions @ \$1,125.00/session	= \$	15,750.00
Hearings: February 21, 2022	2 sessions	
February 22, 2022	2 sessions	
February 23, 2022	2 sessions	
February 24, 2022	2 sessions	
February 25, 2022	2 sessions	
March 7, 2022	1 session	
March 8, 2022	1 session	
March 10, 2022	2 sessions	
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Total Hearing Session Fees	= \$	19,575.00

The Panel has assessed \$17,662.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$1,912.50 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Katherine Hendricks	-	Public Arbitrator, Presiding Chairperson
Jonathan Sprouffske	-	Public Arbitrator
Martin Kehoe	-	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

Katherine Hendricks

Katherine Hendricks
Public Arbitrator, Presiding Chairperson

03/21/2022

Signature Date

Jonathan Sprouffske

Jonathan Sprouffske
Public Arbitrator

03/22/2022

Signature Date

Martin Kehoe

Martin Kehoe
Public Arbitrator

03/21/2022

Signature Date

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March 22, 2022

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