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## Arb Panel Rules Against Schwab, Pinnacle Associates in \$800K Client Dispute

A client was forced to sell hundreds of Apple shares due to the firms' actions, according to the panel.

By Jeff Berman | August 29, 2022

A three-person arbitration panel in New York has ordered Charles Schwab and RIA Pinnacle Associates to pay a retiree more than \$800,000 over an Apple options contract strategy that the former client alleged resulted in significant monetary damages to her portfolio.

However, the arb panel also ruled that Pinnacle must reimburse Schwab any sum that Schwab pays to the complainant "pursuant to the parties' contract."

"As always, we work to deliver exceptional experiences to all our clients and serve them as a trusted partner along their financial journeys," a Schwab spokesperson told ThinkAdvisor on Monday. The firm declined to comment further. Pinnacle didn't immediately respond to a request for comment.

In December 2020, Maria Fernbach and her attorney filed a complaint against the companies, and an amended complaint was filed in July 2021, according to the arbitration award ruling ([http://www.finra.org/sites/default/files/aa0\\_documents/20-04126.pdf](http://www.finra.org/sites/default/files/aa0_documents/20-04126.pdf)) posted on the Financial Industry Regulatory Authority website on Aug. 16.

In the amended statement of claim, Fernbach asserted causes of action that included fraud, omissions and misstatements, common law fraud, fraudulent inducement, breach of fiduciary duty, negligence, failure to supervise, breach of contract, breach of covenants of good faith and fair dealing, and violation of New York General Business Law Article 22-A.

As a result of actions taken by the firms, Fernbach was forced to sell hundreds of shares of Apple stock, according to a Barron's report (<https://www.barrons.com/advisor/articles/charles-schwab-pinnacle-arbitration-loss-51660929100>).

In the original statement of claim, Fernbach requested total compensatory damages of not less than \$780,377, interest at the legal rate of 9% per annum from October 2019 until the award is paid, forum fees, filing fees, attorneys' fees, expert witness fees, and other costs.

In the amended statement of claim, Fernbach boosted the requested total compensatory damages to not less than \$908,982 and added a request for unspecified punitive damages.

In a statement of answer and third-party claim, Schwab requested that Fernbach's claims be denied and all costs assessed against her and indemnification of any award arising out of Pinnacle's direction of trades in the claimant's account.

In Pinnacle's statement of answer to the third-party claim and crossclaim, it sought denial of Schwab's request for indemnification and that its crossclaim for indemnification and contribution be granted.

Although the initial statement of claim was filed on Dec. 18, 2020, it was not served on the respondents nor considered by the arbitrators at that time, according to FINRA.

On March 18, 2022, the claimant filed a motion for monetary sanctions against the respondents. And, on March 25, 2022, Pinnacle filed a response opposing the claimant's motion.

Also on March 25, 2022, Schwab filed a response opposing the claimant's motion. On March 29, 2022, the claimant filed a response in further support of her motion. Also on March 29, 2022, and then on June 10, Schwab requested an expungement, on behalf of unnamed party Cenk Kozulcali (<https://brokercheck.finra.org/individual/summary/4961795>), from registration records.

Schwab, however, did not present any evidence in support of the expungement request during the evidentiary hearings, according to the arb panel. Therefore, the panel made no determination with respect to the expungement request made on behalf of Kozulcali, it said, adding that Kozulcali can commence a separate proceeding seeking expungement.

Kozulcali has been a rep with Schwab since 2018 and is registered as an advisor and broker, according to his report on FINRA's BrokerCheck website.

## **The Award**

The arb panel ruled that Schwab and Pinnacle were jointly and severally liable for and shall pay to Fernbach \$436,110 in compensatory damages, interest on that sum at the rate of 9% per annum from the date of the award through the date the award is paid in full, pay Fernbach \$304,500 in attorneys' fees, and pay her \$74,400 in other costs, for a total of \$815,010.

However, Schwab's third-party claim for indemnification was granted by the panel, which said Pinnacle must reimburse Schwab any sum that Schwab pays to Fernbach.

Pinnacle's crossclaim and counterclaim were denied in their entirety. The RIA was also ordered to pay Fernbach \$10,000 for failure to timely produce documents and to pay Schwab \$352,138 in attorneys' fees based on the parties' contract.

*(Image: Bloomberg)*