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**UNITED STATES  
DISTRICT COURT  
CLARK COUNTY, NEVADA**

IN THE MATTER BETWEEN

THOMAS J. SANDUSKI,

Petitioner,

vs.

CHARLES SCHWAB & CO., INC.,

Respondent

Case No.: **2:19-cv-01340-JAD-BNW**

Dept:

**PETITION TO VACATE  
ARBITRATION AWARD**

COMES NOW, Petitioner Thomas J. Sanduski, submits this motion to vacate a binding arbitration award based upon 9 U.S. Code § 10 (a)(2) **where there was evident partiality or corruption in the arbitrators, or either of them;** (emphasis added) and 9 U.S. Code § 10 (a)(3) **where the arbitrators were guilty of misconduct in refusing to postpone the hearing, upon sufficient cause shown,** or in refusing to hear evidence pertinent and material to

1 the controversy; or of any other misbehavior by which the rights of any party have been  
2 prejudiced; (emphasis added)

- 3 1. Petitioner Thomas J. Sanduski (“Mr. Sanduski”) is an individual who resides in  
4 Clark County, Nevada.
- 5 2. Respondent Charles Schwab & Co., Inc. (“Schwab”) is a corporation  
6 incorporated in the State of California doing business in the State of Nevada.
- 7 3. Jurisdiction is appropriate in the Eight Judicial District as the arbitration  
8 underlying this Petition to Vacate was held in Clark County, NV on March 27-  
9 28, 2019, pursuant to the agreement of the parties.
- 10 4. Petitioner seeks to vacate the arbitration award issued against him on May 9,  
11 2019 by a panel of the Financial Industry Regulatory Authority (“FINRA”) securities arbitrators Case No. 18-01513 following a two day hearing in Las  
12 Vegas, NV. (**See Exhibit A**)
- 13 5. Schwab was the Claimant in the arbitration seeking \$418,518.14 from  
14 Respondent Thomas J. Sanduski. FINRA rules of arbitration require that a  
15 panel of **three in-person arbitrations** hear cases involving more than  
16 \$100,000 in claims. (emphasis added, **see Exhibit B**)
- 17 6. Approximately 90 minutes into day one of a scheduled two day hearing, one of  
18 the three arbitrators, Mr. Geddes, informed the Chairman of the panel, Mr.  
19 Edmonson, that he had a family emergency and would be unable to attend the  
20 hearing in person the following day.
- 21 7. The Chairman then proposed three options to the parties: 1) Adjourn the  
22 hearing immediately and resume at a later date when all three arbitrators could  
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1 be present. 2) Continue the hearing with only two arbitrators-the Chairman and  
2 Ms. Grinell, or 3) Continue the hearing with all three arbitrators present on day  
3 one, but with Mr. Geddes listening in via telephone on day two.

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5 8. The parties were sent on a break to separately discuss their options. Option 2  
6 did not seem to make sense since it would be unclear how a 1-1 decision would  
7 be handled.

8  
9 9. Upon returning from break both parties agreed to Option 3 to allow Mr.  
10 Geddes to listen in on day two via telephone, but the Chairman and Schwab's  
11 counsel -- Mr. Siders, both admitted this was an unprecedented situation in  
12 their personal arbitration experiences.

13  
14 10. After the conclusion of the hearing on day one, Mr. Sanduski began to have  
15 doubts about the fairness of having arbitrator Mr. Geddes not present for the  
16 hearing on day two. That evening, (March 27, 2018) Mr. Sanduski reached out  
17 to Leeds-Brown Law in New York, NY for guidance in this matter. Jeffrey  
18 Brown Esq. of said firm informed Mr. Sanduski to seek an adjournment. (see  
19 **Exhibit C**)

20  
21 11. At the start of the arbitration hearing on day two, Mr. Sanduski apologized for  
22 agreeing to Option 3, but now wished for an adjournment and to seek to retain  
23 counsel. Schwab's counsel objected to Mr. Sanduski's request. Mr. Sanduski  
24 presented a copy of page 45 of FINRA's Chairperson's Training Guide (see  
25 **Exhibit D**) to Schwab's counsel and to the Chairman which included the  
26 following text:

27 • *Rule 12208 which states that parties have the right to representation by*  
28

1 *counsel at any stage of the proceeding;*

2 • *The Arbitrator's Guide which describes the right to representation by an*  
3 *attorney as absolute; and*

4 • *Canon IV C of the Code of Ethics which provides that arbitrators should not*  
5 *deny any party the opportunity to representation. In the example given, the*  
6 *panel should grant the motion to postpone. Courts have held that a panel's*  
7 *failure to grant a party's request for a postponement or adjournment to obtain*  
8 *counsel constitutes serious arbitrator misconduct and valid grounds to vacate*  
9 *an award. See Chapter 1, Section 10(a) of United States Arbitration Act for the*  
10 *grounds upon which awards may be vacated.*

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13 12. Despite presenting this overwhelming evidence as to why an adjournment  
14 should be granted, the Chairman denied both of Mr. Sanduski's requests stating  
15 that he had agreed to Option 3, and that he had had counsel in the past and that  
16 counsel had withdrawn on January 19, 2019.

17  
18 13. Mr. Sanduski contacted Joshua Kons Esq. for possible legal representation but  
19 he was unable to afford Mr. Kons' services. Mr. Kons did ask Mr. Sanduski if  
20 he would be willing to be the lead plaintiff on a class action lawsuit involving  
21 investment losses due to the possible manipulation of the VIX index. Mr.  
22 Sanduski agreed to be the lead plaintiff. After several months of Mr. Sanduski  
23 working on his own case *pro se*, Mr. Kons provided some brief pro bono  
24 assistance to Mr. Sanduski as he felt bad for his situation, but as Mr.  
25 Sanduski's hearing date approached, Mr. Kons withdrew as Mr. Sanduski  
26 could not afford to pay for Mr. Kons travel and lodging expenses to attend the  
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1 hearing. However, Mr. Jeffrey Brown Esq. expressed interest in helping Mr.  
2 Sanduski on a contingency basis but the opportunity for such assistance was  
3 then denied by the Chairman of the arbitration panel.  
4

5 14. The hearing continued on day two for approximately six hours with arbitrator  
6 Mr. Geddes listening in via telephone. Several written items were introduced  
7 on day two which Mr. Geddes was not able to visual follow during their  
8 presentation. The nature of Mr. Geddes family emergency was not disclosed.  
9 The fairness of the hearing for Mr. Sanduski was compromised by the lack of  
10 Mr. Geddes physical presence at the hearing as required per FINRA rules for  
11 cases involving more than \$100,000 in claims. If for example, he had had a  
12 sick child and Mr. Geddes needed to check on the child, there would be no way  
13 of knowing if Mr. Geddes was fully engaged at all times during the  
14 proceedings on day two.  
15

16 15. The hearing concluded on day two. As the parties were leaving, Jim Reilly who  
17 had been an outside expert witness for Schwab said “See you next week.” to  
18 arbitrator Ms. Grinell. (see **Exhibit A**) In the Award letter posted May 9, 2019,  
19 Chairman Edmonson strongly rebuked this exchange when he wrote that it  
20 “*compromises the independence of the panel in the eyes of opposing parties.*”  
21 Mr. Sanduski later found out that Ms. Grinell served on an arbitration panel the  
22 following week in Schwab vs. Jay Hu FINRA case No. 18-01469 (see **Exhibit**  
23 **E**) in which Mr. Reilly again testified as an expert witness for Schwab and for  
24 which Ms. Grinell again awarded a judgment in favor of Schwab.  
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1 16. Mr. Sanduski was planning to submit a post-hearing brief but three days after  
2 the hearing on April 1, 2019, Mr. Sanduski received notice that arbitrator Ms.  
3 Grinell had had ex parte communications with Schwab witness and employee  
4 Jeff Hanson who is Schwab's managing director of margin services. (see  
5 **Exhibit F**) Ms. Grinell requested to share an Uber ride to the airport with Mr.  
6 Hanson and engaged him in conversation in clear violation of FINRA rule  
7 12211 (h). The FINRA Arbitrator's Guide provides even more detail on this  
8 matter as quoted here from page 55:

9  
10 ***Avoiding Ex Parte Communications***

11 *Unless operating under the Direct Communication Rule, FINRA Rule 12211*  
12 *provides that no party, or anyone acting on behalf of a party, may*  
13 *communicate with any arbitrator outside of a scheduled hearing or conference*  
14 *regarding an arbitration unless all parties or their representatives are present.*  
15 *Communications include an exchange about the arbitration case, as well as an*  
16 *exchange of pleasantries or casual comments.*

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19 17. Ms. Grinell in her disclosure on the matter said that the three arbitrators had  
20 decided the case shortly after the conclusion of day two and in her mind the  
21 case was closed. However, the FINRA Arbitrator's Guide warns on page 79 to  
22 avoid ex parte communications even after the hearing has closed:

23  
24 ***PART ELEVEN: AFTER THE CASE CLOSES***

25 ***Avoiding Party Contact***

26 *Communications with the parties should be scrupulously avoided even after the*  
27 *proceedings are concluded. If a party contacts an arbitrator after the hearing*  
28

1 *closes, the arbitrator should notify FINRA staff immediately. A party should*  
2 *not directly contact arbitrators under any circumstances. Arbitrators should*  
3 *contact FINRA staff immediately if questioned about a case, asked to testify,*  
4 *asked to sign an affidavit, or threatened with a lawsuit by a party.*  
5

6 18. Upon reading Ms. Grinell's post-hearing disclosure that the case had already  
7 been decided shortly after the end of closing arguments on March 28, 2019, Mr.  
8 Sanduski did not file a post-hearing brief feeling it would now be a waste of  
9 time.  
10

11 19. Mr. Hanson, like Mr. Reilly, was also a witness the following week for  
12 Schwab in Schwab vs. Jay Hu. Ms. Grinell's Ex Parte interaction with Mr.  
13 Hanson was disclosed prior to this hearing, (**see Exhibit G**), but it brings into  
14 question partiality concerns regarding arbitrator Ms. Grinell.  
15

16 20. In conclusion, due to arbitrator misconduct to 1) not postpone the hearing so  
17 Mr. Sanduski could seek to retain counsel as was his right under Canon IV C  
18 of the Code of Ethics, 2) not postpone the hearing until all three arbitrators  
19 were physically present per FINRA rules for cases involving claims over  
20 \$100,000, and 3) for evidence of arbitrator partiality in the form of Ms.  
21 Grinell's ex parte communications with not just one, but both of Schwab's  
22 witnesses, Mr. Sanduski requests the court to 1) vacate the arbitration award in  
23 its entirety, 2) require a de novo hearing with a new set of arbitrators should  
24 Schwab choose to resubmit its claim and 3) grant such other and further relief  
25 as the court deems just and proper.  
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Dated this 2nd<sup>1</sup> day of August, 2019.

*Thomas J. Sanduski*

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Thomas J. Sanduski *Pro Se*

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1 Certificate of Service

2 I HEREBY CERTIFY, that on this 2<sup>nd</sup> day of August, 2019, I caused to be served via the  
3 electronic filing system (if the intended recipients are registered users) and via United States  
4 Mail, postage prepaid, and via the FINRA dispute resolution portal, a true and correct copy of  
5 the foregoing **PETITION TO VACATE ARBITRATION AWARD** addressed to the  
6 following:  
7

8  
9 Joseph L. Siders, Esq.

10 Charles Schwab & Co., Inc.

11 150 S. Wacker Dr., 14<sup>th</sup> Floor

12 Chicago IL 60606

13 [Joseph.siders@schwab.com](mailto:Joseph.siders@schwab.com)

14 Attorney for Respondent

15 Charles Schwab & Co., Inc.  
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21 Thomas J. Sanduski *Pro Se*  
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# EXHIBIT A

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimant  
Charles Schwab & Co., Inc.

Case Number: 18-01513

vs.

Respondent  
Thomas J. Sanduski

Hearing Site: Las Vegas, Nevada

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Nature of the Dispute: Member vs. Customer

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimant Charles Schwab & Co., Inc. ("Claimant"): Joseph L. Siders, Esq., Charles Schwab & Co., Inc., Chicago, Illinois.

Respondent Thomas J. Sanduski ("Respondent") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: April 25, 2018.  
Claimant signed the Submission Agreement: April 25, 2018.

Statement of Answer filed by Respondent on or about: June 19, 2018.  
Respondent signed the Submission Agreement: June 7, 2018.

**CASE SUMMARY**

Claimant alleged that Respondent breached the terms of the Schwab One Account Agreement by failing to pay the unsecured debit balance in his Schwab One Brokerage Account ("Brokerage Account").

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

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. The unsecured debit balance in the Brokerage Account as of March 31, 2018 in the amount of \$418,518.14;

2. Interest calculated at California's statutorily prescribed rate of 10%;
3. Post-award interest at the legal rate;
4. Fees and expenses;
5. Forum and hearing session fees; and
6. Such other and further relief as the Panel deems appropriate.

In the Statement of Answer, Respondent requested that Claimant's Statement of Claim be dismissed in its entirety, and that he be awarded any such other and further relief as is just and equitable.

#### **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 held on March 27, 2019, the parties agreed that Arbitrator Roger A. Geddes ("Arbitrator Geddes") could participate telephonically in the evidentiary hearing to be held on the following day.

On March 28, 2019, during the course of the second day of the evidentiary hearing, Respondent requested a postponement to retain counsel and because Arbitrator Geddes was not physically present in the hearing room. Claimant objected to Respondent's request because the parties had agreed to Arbitrator Geddes participating telephonically the day before. The Chairperson denied Respondent's request for postponement. The Chairperson found that Respondent had sufficient time to retain counsel prior to the evidentiary hearing since his former counsel withdrew from representing him on January 15, 2019.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, a majority of the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant the amount of \$418,518.14 in compensatory damages for the unsecured debit balance.
2. Any and all claims for relief not specifically addressed herein are denied.

#### **POST-AWARD DISCUSSION**

Below, Chairperson Larry Edmonson ("Chairperson Edmonson") and Arbitrator Sheila Grinell ("Arbitrator Grinell") provide their individual comments on two interactions between Claimant's expert witnesses, Messrs. R and H, and Arbitrator Grinell following the conclusion of the evidentiary hearing. Arbitrator Geddes did not wish to include any comments in the Award.

### **Chairperson Edmonson**

At the conclusion of the evidentiary hearing, Mr. R, openly in the hearing room, stated to Arbitrator Grinell that he would "see her next week." Arbitrator Grinell advised the panelists that she was appointed to hear another matter the following week. Mr. R, who maintains FINRA licenses 3, 4, 7, 8, 14, 24, 63 and 65, knows of the importance of due care and independence in arbitration, and so should Arbitrator Grinell. This statement made by Mr. R, prior to the deliberation of the Panel's award and in the hearing room with all concerned parties, compromises the Panel's independence in the eyes of opposing parties.

### **Arbitrator Grinell**

Regarding Mr. R: As Chairperson Edmonson noted, Mr. R looked at me and said "see you next week" as he left the room after argument in the case had concluded. It took me a second to realize what he meant—that he was aware of another hearing in which I am also serving as arbitrator. I did not reply to Mr. R, but did explain my understanding of the comment to the other panelists.

Regarding Mr. H: At the end of the hearing on March 28, after the Panel had deliberated and the majority had come to a conclusion, Chairperson Edmonson said he would proceed to write the order and return the recorder and exhibits to FINRA. He required nothing more from his co-panelists. From my point of view, the case was over.

I stepped out of the hotel to call an Uber to go to the airport and found that Mr. H was also going to the airport in an Uber. In the hopes of making an earlier flight, I asked to share his ride but warned that I would not permit any talk about the case. Mr. H and I shared the ride and did not discuss the case.

This shared trip to the airport had no bearing on my decision in the case, which had already been made in the presence of the other two arbitrators. Nor did Mr. R's spontaneous comment, to which I did not reply, have any bearing on the case. I fulfilled my duties as an arbitrator faithfully and fairly.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 2,125.00
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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 firm(s) that employed the associated person(s) at the time of the event(s)