

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Richard Trust

Case Number: 18-04020

vs.

Respondent  
TD Ameritrade, Inc.

Hearing Site: San Francisco, California

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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.

The evidentiary hearing was conducted by videoconference.

**REPRESENTATION OF PARTIES**

Claimant Richard Trust (“Claimant”) appeared pro se.

For Respondent TD Ameritrade, Inc. (“Respondent”): James J. Vihstadt, Esq., TD Ameritrade, Inc., Omaha, Nebraska.

**CASE INFORMATION**

Statement of Claim filed on or about: November 15, 2018.

Amended Statement of Claim filed on or about: September 10, 2019.

Claimant signed the Submission Agreement: November 15, 2018.

Statement of Answer filed by Respondent on or about: January 8, 2019.

Answer to Amended Statement of Claim filed by Respondent on or about: September 22, 2019.

Respondent signed the Submission Agreement: January 8, 2019.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted unauthorized trading as the cause of action.

In the Amended Statement of Claim, Claimant asserted the following causes of action: breach of contract; breach of fiduciary duty; unauthorized trading; churning; negligence; negligent misrepresentation; equitable lien; unjust enrichment; violation of California Business and Professional Codes § 17200 and § 17500; promissory estoppel, constructive trust; fraud; promissory fraud; constructive fraud; conversion; violation of NASD Rule 2510; violation of FINRA rules 2010, 2020, and 4512; violation of 17 CFR § 240.10b-5; violation of the Unfair Competition Law; and violation of Consumers Legal Remedies Act. The causes of action relate to Respondent allegedly trading in Claimant's investment accounts without authorization.

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

### **RELIEF REQUESTED**

In the Amended Statement of Claim, Claimant requested:

1. Unspecified compensatory damages to place Claimant in the same position as if the unauthorized trading had not occurred;
2. Treble damages;
3. Attorneys' fees;
4. Punitive damages;
5. Statutory damages;
6. Interest;
7. Declaratory relief;
8. Injunctive relief;
9. Costs; and
10. Such other relief as the Panel may deem proper.

In the Statement of Answer and the Answer to the Amended Statement of Claim, Respondent requested:

1. Denial of Claimant's claims; and
2. Assessment of all costs against Claimant.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

On June 27, 2019, Claimant submitted a Motion to Amend the Statement of Claim ("Motion to Amend"). On July 8, 2019, Respondent submitted its opposition to the Motion to Amend. On August 27, 2019, the Panel granted Claimant's Motion to Amend.

The Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, 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 sum of \$298,400.00 in damages.
2. Any and all claims for relief not specifically addressed herein, including any requests for treble damages, attorneys' fees, and punitive damages, are denied.

**FEES**

Pursuant to the Code of Arbitration Procedure ("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

*\*The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Dispute Resolution Services previously deferred Claimant's filing fee of \$1,575.00. Upon conclusion of the matter, the Panel determined to assess the fee.

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

**Postponement Fees**

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

September 24-25, 2019, postponement requested by Claimant =\$ 1,125.00  
January 5-6, 2021, postponement requested by Claimant =\$ 1,125.00

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Total Postponement Fees =\$ 2,250.00

The Panel has assessed the total postponement fees to Claimant.

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

Four (4) decision on a discovery-related motion on the papers =\$ 2,400.00  
with the Panel @ \$600.00/decision

Claimant submitted two (2) discovery-related motions  
Respondent submitted two (2) discovery-related motions

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Total Discovery-Related Motion Fees =\$ 2,400.00

The Panel has assessed \$2,100.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$300.00 of the 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:

Six (6) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	6,750.00
Pre-Hearing Conferences:		
March 27, 2019	1 session	
August 27, 2019	1 session	
March 31, 2020	1 session	
July 29, 2020	1 session	
October 19, 2020	1 session	
January 5, 2021	1 session	
Three (3) hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Hearings:		
February 11, 2021	2 session	
February 12, 2021	1 session	
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Total Hearing Session Fees	= \$	10,125.00

The Panel has waived \$1,125.00 of the hearing session fees.

The Panel has assessed \$9,000.00 of the session fees to Respondent.

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

**ARBITRATION PANEL**

Daniel M. Yamshon	-	Public Arbitrator, Presiding Chairperson
Herb Schwartz	-	Public Arbitrator
Rosalind Ramsey Tyson	-	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**

***Daniel M. Yamshon***

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Daniel M. Yamshon  
Public Arbitrator, Presiding Chairperson

**03/03/2021**

\_\_\_\_\_  
Signature Date

***Herb Schwartz***

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Herb Schwartz  
Public Arbitrator

**03/03/2021**

\_\_\_\_\_  
Signature Date

***Rosalind Ramsey Tyson***

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Rosalind Ramsey Tyson  
Public Arbitrator

**03/05/2021**

\_\_\_\_\_  
Signature Date

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March 05, 2021

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