

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Anthony Porco

Case Number: 19-01867

vs.

Respondent
TD Ameritrade, Inc.

Hearing Site: New York, New York

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

For Claimant Anthony Porco: Jonathan E. Neuman, Esq., Law Offices of Jonathan E. Neuman, Esq., Fresh Meadows, New York.

For Respondent TD Ameritrade, Inc.: James J. Vihstadt, Esq., TD Ameritrade, Omaha, Nebraska.

CASE INFORMATION

Statement of Claim filed on or about: July 2, 2019.
Anthony Porco signed the Submission Agreement: July 2, 2019.

Statement of Answer filed by Respondent on or about: August 26, 2019.
TD Ameritrade, Inc. signed the Submission Agreement: August 26, 2019.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: unsuitability; negligence; breach of contract; respondeat superior; and failure to supervise. The causes of action relate to unspecified securities.

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 compensatory damages in the approximate amount of \$1,700,000.00 plus statutory 9% pre-judgment and post-judgment interest thereon (CPLR §§ 5001-5004); costs; and such other, further, and additional relief as the Panel may seem just and proper.

In the Statement of Answer, Respondent requested that the Statement of Claim be denied and that all costs be assessed against Claimant.

Respondent filed a request for expungement, on behalf of Unnamed Party Alex Shvartsman, of all references to this matter from Central Registration Depository ("CRD") registration records. Please see the Other Issues Considered and Decided section of this Award for more information.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Panel reviewed Alex Shvartsman's BrokerCheck® Report . The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

In recommending expungement, the Panel relied upon the following documentary or other evidence: the pleadings; Unnamed Party Alex Shvartsman's testimony; Claimant's testimony; Respondent Robert Ruffo's BrokerCheck® Report; and the exhibits.

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. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2048215) from registration records maintained by the CRD for Unnamed Party Alex Shvartsman (CRD Number 3017804) with the understanding that, pursuant to Notice to Members 04-16, Unnamed Party Alex Shvartsman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code of Arbitration Procedure (“Code”), the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

Evidence presented at the hearing does not support Claimant’s version of the facts. Claimant is not credible. Losses were caused not by the broker but rather by the self-initiated trades requested by Claimant.

3. Any and all claims for relief not specifically addressed herein 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 = \$ 2,000.00

**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 that employed the associated person at the time of the event giving rise to the dispute. Accordingly, as a party, Respondent TD Ameritrade, Inc. is assessed the following:

Member Surcharge = \$ 3,025.00

Member Process Fee = \$ 6,175.00

Postponement Fees

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

July 28-31, 2020, postponement requested by the parties. WAIVED

August 31, 2021, postponement requested by the parties. = \$ 1,400.00

Total Postponement Fees = \$ 1,400.00

The Panel has assessed \$700.00 of the postponement fees to Claimant.

The Panel has assessed \$700.00 of the postponement 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 Arbitrators, including a pre-hearing conference with the Arbitrators, which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) hearing sessions @ \$1,400.00/session			= \$ 4,200.00
Hearings:	September 1, 2021	2 sessions	
	September 2, 2021	1 session	
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Total Hearing Session Fees			= \$ 4,200.00

The Panel has assessed the total hearing session fees to Claimant.

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

ARBITRATION PANEL

Betty Chen	-	Public Arbitrator, Presiding Chairperson
Terrance J. Nolan	-	Public Arbitrator
John Michael Richardson	-	Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

Betty Chen

Betty Chen
Public Arbitrator, Presiding Chairperson

09/08/2021

Signature Date

Terrance J. Nolan

Terrance J. Nolan
Public Arbitrator

09/08/2021

Signature Date

John Michael Richardson

John Michael Richardson
Public Arbitrator

09/08/2021

Signature Date

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September 08, 2021

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