

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Allan T. Schmaltz IRA

Case Number: 20-00106

vs.

Respondent
TD Ameritrade, Inc.

Hearing Site: Boston, Massachusetts

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

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Allan T. Schmaltz IRA: John E. Sutherland, Esq., Brickley / Sears, P.A., Boston, Massachusetts.

For Respondent TD Ameritrade, Inc.: John D. Stewart, Esq., Baritz & Colman LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: January 10, 2020.

Allan T. Schmaltz IRA signed the Submission Agreement: November 27, 2019.

Statement of Answer filed by Respondent on or about: March 9, 2020.

TD Ameritrade, Inc. signed the Submission Agreement: March 9, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: failure to supervise; breach of fiduciary duty; breach of contract; suitability; gross negligence; misrepresentation and omissions; violation of the Massachusetts Securities Statute, General Laws, Chapter 110A and the Consumer Protection Statute, General Laws 93A, Section 9. These causes of action relate to investments in highly speculative options in an IRA 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 \$77,373.80 in compensatory damages plus statutory interest; attorneys' fees and expenses.

In the Statement of Answer, Respondent requested that the claims asserted in the Statement of Claim be denied; that all costs be assessed to the Claimant; and for any further relief as determined by the Arbitrator.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

By correspondence dated September 29, 2021, Respondent filed a Motion to proceed with the final hearing by zoom. By correspondence dated September 30, 2021, Claimant objected to Respondent's Motion. Claimant filed a reply dated September 30, 2021. On November 18, 2021, the Arbitrator heard oral argument on Respondent's Motion. By Order dated December 6, 2021, the Arbitrator granted Respondent's Motion for a zoom hearing.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator 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. Any and all claims for relief not specifically addressed herein, including any requests for attorneys' fees, are denied.

ARBITRATOR'S EXPLANATION OF DECISION

Claimant had a self-directed account and enlisted a third-party to make trades for him. It was his choice to engage a third-party and Respondent did not have any role in vetting or monitoring his actions. Claimant did not rely on any representations from Respondent. In addition, Claimant did not support the claim for damages in any way to show how the portfolio should have performed absent the third-party's involvement. Claimant was engaged in and approved risky options trading. Claimant was in an investment club and aware of the risk. Respondent followed proper procedure in "knowing" Claimant. It was Claimant's choice to trust the third-party.

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 = \$ 975.00

**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 = \$ 1,100.00
Member Process Fee = \$ 2,250.00

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

November 17, 2020, cancellation requested by the parties = \$ 100.00

Total Late Pre-Hearing Cancellation Fees = \$ 100.00

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Claimant.

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Respondent.

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions with a single Arbitrator @ \$450.00/session = \$ 900.00
Pre-Hearing Conferences: February 8, 2021 1 session
November 18, 2021 1 session

Two (2) hearing sessions @ \$450.00/session = \$ 900.00
Hearing: February 23, 2022 2 sessions

Total Hearing Session Fees = \$ 1,800.00

The Arbitrator has assessed \$900.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$900.00 of the hearing session fees to Respondent.

ARBITRATOR

Andrea J. Goldman

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Sole 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.

Arbitrator's Signature

Andrea J. Goldman

Andrea J. Goldman
Sole Public Arbitrator

03/11/2022

Signature Date

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March 11, 2022

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