

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
John Elliott

Case Number: 20-00400

vs.

Respondents
TD Ameritrade Clearing, Inc.
TD Ameritrade, Inc.

Hearing Site: Denver, Colorado

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. Members

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant John Elliott (“Claimant”): Matthew R. Lewis, Esq., Kunzler Bean & Adamson, PC, Salt Lake City, Utah.

For Respondents TD Ameritrade Clearing, Inc. (“TD Ameritrade Clearing”) and TD Ameritrade, Inc. (“TD Ameritrade”): Eric A. Bensky, Esq. and Alexandra Maritzel, Esq., Murphy & McGonigle, P.C., Washington, District of Columbia.

Hereinafter, TD Ameritrade Clearing and TD Ameritrade are collectively referred to as “Respondents”.

CASE INFORMATION

Statement of Claim filed on or about: February 3, 2020.

Amended Statement of Claim filed on or about: June 26, 2020.

Answer to Respondents’ Counterclaim filed on or about: May 18, 2020.

Answer to Respondents’ Amended Counterclaim filed on or about: August 24, 2020.

Claimant signed the Submission Agreement: February 3, 2020.

Statement of Answer and Counterclaim filed by Respondents on or about: April 27, 2020.

Answer to Amended Statement of Claim and Amended Counterclaim filed by Respondents on or about: August 3, 2020.

Respondents signed the Submission Agreement: April 27, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; breach of covenant of good faith and fair dealing; negligence; unjust enrichment; and conversion.

In the Amended Statement of Claim, Claimant asserted the following causes of action: breach of contract; breach of express warranties; breach of covenant of good faith and fair dealing; unauthorized trading; and negligence. The causes of action relate to a large number of options and various securities held in Claimant's Portfolio Margin account.

In the Statement of Answer and Answer to the Amended Statement of Claim, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In the Counterclaim and Amended Counterclaim, Respondents asserted indemnification as the sole cause of action. The cause of action relates to the Portfolio Margin account and the parties' Client Agreement.

In the Answers to Respondents' Counterclaim and Amended Counterclaim, Claimant denied the allegations made in the Counterclaim and Amended Counterclaim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

1. Restitution;
2. Compensatory damages; and
3. Equitable and other relief, which could include specific performance (return of liquidated securities, cash and lost dividends), in excess of \$8 million and in an amount to be proven at the hearing in this matter.

In the Amended Statement of Claim, Claimant requested:

1. Compensatory damages, totaling in excess of \$8 million, including:
 - a. money at the current valuation on date of judgment to repurchase Equity and ETF positions that were illegally liquidated and/or specific return of those securities, totaling \$5,093,543.63 as of May 31, 2020;
 - b. plus, lost dividends on the elements in item (a) to the date of judgment. As of May 31, 2020, those actual dividends total \$160,255.05;
 - c. plus, money used by Respondents in its liquidation, totaling \$2,953,524.54; and
 - d. minus, money representing the value of options that expired in-the-money, netting out to \$152,253.64 (an offsetting amount to the other values); and
2. Punitive damages.

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

1. Denial of Claimant's claims in their entirety;
2. All amounts sought in the Counterclaim, including attorneys' fees, expenses arising from Claimant's use of Respondents' website and related services and in defending themselves against Claimant's claims, indemnification and other payment in an amount at least equal to the costs and expenses, and any liabilities, judgments, or damages

incurred in connection with claims asserted by Claimant in the Statement of Claim and Amended Statement of Claim;

3. Assessment of all fees against Claimant; and
4. Any other relief the Panel deems just and proper.

In his Answers to Respondents' Counterclaim and Amended Counterclaim, Claimant requested Respondents' Counterclaim and Amended Counterclaim be denied.

At the hearing, Claimant requested:

1. \$10,880,456.84 on his claim for negligence;
2. \$11,843,852.72 on his claim for breach of contract;
3. Return of cash and securities in Claimant's account on his claim for rescission; and
4. Such other relief the Panel deems just and equitable.

At the hearing, Respondents requested:

1. An award denying Claimant's claims in their entirety; and
2. Such other relief the Panel deems 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.

On June 26, 2020, Claimant filed a Motion to Amend Statement of Claim. On July 6, 2020, Respondents filed their opposition. On July 8, 2020, Claimant filed his reply. By Order dated July 10, 2020, the Panel granted Claimant's motion.

On August 3, 2020, Claimant filed a Motion for Partial Summary Judgment. On August 28, 2020, Respondents filed a response opposing the motion. On September 4, 2020, Claimant filed his reply. On September 14, 2020, the Panel heard oral arguments on Claimant's Motion for Partial Summary Judgment. That same day, the Panel issued an order denying the motion.

On September 22, 2021, Claimant filed a written objection to certain statements made during Respondents' September 3, 2021 closing argument. On September 24, 2021, Respondents filed a response. The Panel overrules Claimant's objection.

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. Respondents are jointly and severally liable for and shall pay to Claimant the sum of \$2,082,148.30 in compensatory damages.
2. Respondents' Counterclaim is denied.

3. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and attorneys' fees, 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	= \$	2,250.00
Counterclaim Filing Fee	= \$	4,000.00

**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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute.

Accordingly, as a party, TD Ameritrade Clearing is assessed the following:

Member Surcharge	= \$	3,600.00
Member Process Fee	= \$	6,800.00

Accordingly, as a party, TD Ameritrade is assessed the following:

Member Surcharge	= \$	3,600.00
Member Process Fee	= \$	6,800.00

Discovery-Related Motion Fees

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

One (1) decision on a discovery-related motion on the papers with the Panel @ \$600.00/decision	= \$	600.00
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Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees	= \$	600.00
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The Panel has assessed \$300.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$300.00 of the discovery-related motion fees jointly and severally to Respondents.

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:

One (1) pre-hearing session with a single Arbitrator @ \$450.00/session	= \$	450.00
Pre-Hearing Conference: October 5, 2020	1 session	
Four (1) pre-hearing sessions with the Panel @ \$1,500.00/session	= \$	6,000.00
Pre-Hearing Conferences: June 29, 2020	1 session	
September 14, 2020	1 session	
March 16, 2021	1 session	
June 10, 2021	1 session	
Fourteen (14) hearing sessions @ \$1,500.00/session	= \$	21,000.00
Hearings: August 30, 2021	2 sessions	
August 31, 2021	3 sessions	
September 1, 2021	3 sessions	
September 2, 2021	3 sessions	
September 3, 2021	3 sessions	
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Total Hearing Session Fees	= \$	27,450.00

The Panel has assessed \$13,725.00 of the hearing session fees to Claimant.

The Panel has assessed \$13,725.00 of the hearing session fees jointly and severally to Respondents.

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

ARBITRATION PANEL

Ruth M. Moore	-	Public Arbitrator, Presiding Chairperson
Marilyn R. Lewis	-	Public Arbitrator
Rick Gale Doty	-	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

Ruth M. Moore

Ruth M. Moore
Public Arbitrator, Presiding Chairperson

09/29/2021

Signature Date

Marilyn R. Lewis

Marilyn R. Lewis
Public Arbitrator

09/29/2021

Signature Date

Rick Gale Doty

Rick Gale Doty
Public Arbitrator

09/29/2021

Signature Date

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September 29, 2021

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