

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

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In the Matter of the Arbitration Between:

Claimant

Kevin A. McIntyre, as Owner of His Rollover IRA

Case Number: 20-00549

vs.

Respondent

TD Ameritrade, Inc.

Hearing Site: Atlanta, Georgia

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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 a majority-public panel.

**REPRESENTATION OF PARTIES**

Claimant Kevin A. McIntyre, as Owner of His Rollover IRA (“Claimant”) appeared pro se.

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

**CASE INFORMATION**

Statement of Claim filed on or about: February 18, 2020.

Claimant signed the Submission Agreement: February 27, 2020.

Statement of Answer to Counterclaim filed on or about: September 2, 2020.

Statement of Answer and Counterclaim filed on or about: May 6, 2020.

Respondent signed the Submission Agreement: May 6, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant alleged that Respondent seized funds in his rollover individual retirement account (IRA). Claimant further alleged that Respondent knew or should have known that the IRA was ERISA-qualified and not subject to seizure.

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

Respondent asserted breach of contract as the cause of action. Respondent alleged that, in

accordance with the Client Agreement, it restricted access to Claimant's IRA account to mitigate the deficit in Claimant's self-directed margin account.

Unless specifically admitted in the Statement of Answer to Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimant requested release of the rollover IRA account containing \$42,152.90 and all accrued interest; any other damages he may suffer as a result of Respondent's conduct, as applicable, and pre-judgment interest on all such damages at the statutory rate; attorneys' fees and costs pursuant to OCGA 13-6-11; and such other and additional relief as the Panel deems just and proper.

In the Statement of Answer and Counterclaim, Respondent requested an award dismissing the Statement of Claim in its entirety, \$166,183.09 in compensatory damages, pre-judgment interest from February 28, 2018 until the date of entry of the Award, reasonable attorneys' fees and costs incurred in the pursuit of the Counterclaim, and post-judgment interest on the total sum due from the date of the Award until it is paid in full.

In the Statement of Answer to Counterclaim, Claimant requested that the Panel dismiss the Counterclaim.

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

The Arbitrators acknowledge having read the pleadings and other materials filed by the parties.

On May 18, 2020, Claimant filed a Motion for Summary Judgment. On May 27, 2020, Respondent filed a Response to the Motion for Summary Judgment.

On May 29, 2020, Claimant filed a Second Motion for Summary Judgment and Request for Enhanced Damages. On June 3, 2020, Respondent filed a Response to the Second Motion for Summary Judgment and Request for Enhanced Damages. On June 8, 2020, Claimant filed a Reply to the Response to the Second Motion for Summary Judgment and Request for Enhanced Damages.

On October 13, 2020, a pre-hearing conference was held for oral arguments on the Motion for Summary Judgment and Second Motion for Summary Judgment and Request for Enhanced Damages. In its Order dated October 19, 2020, the Panel denied the Motion for Summary Judgment and Second Motion for Summary Judgment and Request for Enhanced Damages.

On December 31, 2020, during a pre-hearing conference, Claimant requested that this matter be decided on the papers. Respondent did not object. In its Order dated January 8, 2021, the Panel ruled that, upon receipt of the parties' written agreement, the previously scheduled in-person hearing would be cancelled. On January 12 and 13, 2021, Claimant and Respondent, respectively, filed waivers of the right to a formal, recorded evidentiary hearing. Therefore, this matter proceeded pursuant to Rule 12800 of the Code of Arbitration Procedure ("Code").

**AWARD**

After considering the pleadings, the Panel has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. Claimant is liable for and shall pay to Respondent the sum of \$166,183.09 in compensatory damages.
3. Claimant is liable for and shall pay to Respondent interest at the rate of 6% per annum on the above-stated sum from May 6, 2020 through and including the date this Award is served.
4. FINRA Dispute Resolution Services shall retain the \$600.00 filing fee that Claimant deposited previously.
5. FINRA Dispute Resolution Services shall retain the \$2,125.00 filing fee that Respondent deposited previously.
6. Claimant is liable for and shall pay to Respondent \$1,062.50 to reimburse Respondent for the half of the filing fee previously paid to FINRA Dispute Resolution Services
7. Any and all relief not specifically addressed herein, including requests for punitive damages and attorneys' fees, if any, are denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

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

Initial Claim Filing Fee	= \$	600.00
Counterclaim Filing Fee	= \$	2,125.00

*\*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, Respondent is assessed the following:

Member Surcharge	= \$	750.00
Member Process Fee	= \$	3,250.00

**Discovery-Related Motion Fees**

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

Two (2) decisions on discovery-related motions on the papers	= \$	400.00
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with one (1) Arbitrator @ \$200.00/decision

Claimant submitted two (2) discovery-related motions

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Total Discovery-Related Motion Fees	= \$	400.00
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The Panel has assessed \$200.00 of the discovery-related motion fees to Claimant.

The Panel has assessed \$200.00 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:

Three (3) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	3,375.00
Pre-Hearing Conferences: September 1, 2020	1 session	
October 13, 2020	1 session	
December 31, 2020	1 session	

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Total Hearing Session Fees	= \$	3,375.00
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The Panel has assessed \$1,687.50 of the hearing session fees to Claimant.

The Panel has assessed \$1,687.00 of the hearing session fees to Respondent.

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

**ARBITRATION PANEL**

Mollie Wagner Neal	-	Public Arbitrator, Presiding Chairperson
William Barker Brown	-	Public Arbitrator
James P. Kinkade	-	Non-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**

***Mollie Wagner Neal***

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Mollie Wagner Neal  
Public Arbitrator, Presiding Chairperson

***02/26/2021***

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

***William Barker Brown***

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William Barker Brown  
Public Arbitrator

***02/27/2021***

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

***James P. Kinkade***

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James P. Kinkade  
Non-Public Arbitrator

***02/26/2021***

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

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February 27, 2021

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