

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

---

In the Matter of the Arbitration Between:

Claimants

Burns Francis Trustee U/D/T 4-24-2016,  
Francis D.B. Tate II, and Charlyn Austin

Case Number: 20-03502

vs.

Respondent

E\*Trade Securities LLC

Hearing Site: Chicago, Illinois

---

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: Customers vs. Member

This case was decided by a majority-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Burns Francis Trustee U/D/T 4-24-2016, Francis D.B. Tate II, and Charlyn Austin, hereinafter collectively referred to as “Claimants”: Francis David Burns Tate II.

For Respondent E\*Trade Securities LLC (“Respondent”): John Bersin, Esq. and Meredith Hoffman, Esq., E\*Trade Securities LLC, Menlo Park, California

**CASE INFORMATION**

Statement of Claim filed on or about: October 20, 2020.

Claimants signed the Submission Agreements: November 4, 2020.

Statement of Answer filed on or about: December 28, 2020.

Respondent signed the Submission Agreement: December 28, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimants alleged that they deposited funds by check with Respondent, who disbursed the funds to other financial institutions and did not provide Claimants access to the funds.

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim and asserted an affirmative defense.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory damages in the amount of \$70,686,144.22, punitive/exemplary damages in the amount of \$10,000,000.00, RICO damages in the amount of \$10,000,000.00, and treble damages in the amount of \$10,000,000.00.

In the Statement of Answer, Respondent requested that the Panel deny all claims in the Statement of Claim, assess the costs and expenses of this proceeding against Claimants, and grant Respondent such other and further relief as this Panel may deem just and necessary.

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

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

On June 1, 2021, Respondent filed a Motion to Compel the Production of Documents and Information ("Motion to Compel"), to which no response was filed.

Claimants did not appear at the pre-hearing conference on August 2, 2021, which was scheduled during the Initial Pre-Hearing Conference on March 8, 2021, attended by Mr. Tate, and memorialized in the Initial Pre-Hearing Conference Order dated March 8, 2021. The Panel notes that reminder notices were published on June 14, 2021, and June 16, 2021. In its Order dated August 3, 2021, the Panel ordered the parties to respond to FINRA's scheduling poll.

The Panel held a pre-hearing conference on August 26, 2021. Claimants did not appear. In its Order dated the same date, the Panel continued the hearing on Respondent's Motion to Compel to September 17, 2021 and ruled that, if Claimants did not appear, the Panel may consider any and all available sanctions pursuant to Rule 12212(c) of the Code of Arbitration Procedure ("Code").

On September 7, 2021, Respondent filed a Motion for Sanctions and/or Alternately Adjournment of the Hearing ("Motion for Sanctions"), to which no response was filed.

On September 17, 2021, the Panel held a pre-hearing conference on Respondent's Motion to Compel. Claimants did not appear the pre-hearing conference. In an Order dated the same date, the Panel granted Respondent's Motion to Compel and ordered Claimants' compliance with its ruling by September 24, 2021.

In an Order dated September 29, 2021, the Panel adjourned the hearing. In an Order dated October 8, 2021, the Panel ordered the parties to submit availability to schedule the pre-hearing conference on the Motion for Sanctions. On October 12, 2021, Respondent submitted availability for a pre-hearing conference call, to which no response was filed. A pre-hearing conference call on the Motion for Sanctions was scheduled on November 4, 2021 and notice of the pre-hearing was published on October 15, 2021.

The Panel held a pre-hearing conference on the Motion for Sanctions on November 4, 2021. Claimants did not appear. The pre-hearing conference on the Motion for Sanctions was rescheduled on November 22, 2021. Claimants did not appear. The Panel heard oral arguments on Respondent's Motion for Sanctions in Claimants' absence. Herein, the Panel

grants Respondent's Motion for Sanctions and dismisses Claimants' claims with prejudice pursuant to Rule 12212(c) of the Code. In making its ruling, the Panel finds as follows:

1. Claimants have failed to comply with Rule 12505 of the Code by failing to cooperate in good faith discovery. Claimants have failed to attend a scheduled discovery conference on August 2, 2021, and Claimants failed to provide notice of inability to attend. Claimants have failed to comply with the Panel's Order dated August 3, 2021. Claimants have failed to comply with the Panel's Order dated September 17, 2021. Discovery was not provided in the specified timeframe, nor has any discovery been provided since.
2. Claimants received multiple notices of hearings, notice of adjournment, and warnings of potential consequences, including dismissal, yet failed to comply. On November 22, 2021, Claimants failed to attend, and Claimant failed to provide notice of inability to attend, a scheduled pre-hearing conference on Respondent's Motion for Sanctions, despite notice published on the DR Portal. Claimants registered for the DR Portal and demonstrated the ability to receive and submit documents via the DR Portal and to view and appear pursuant to DR Portal notices in the past. Accordingly, the Panel finds that Claimants' inaction has violated multiple orders of the Panel and that all of the items noted above are tantamount to abandonment of the claim by Claimants.

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

### **AWARD**

After considering the pleadings, the Motion for Sanctions, and the arguments presented at the pre-hearing conference held on November 22, 2021, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed in their entirety with prejudice pursuant to Rule 12212(c) of the Code.
2. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages, treble damages, and attorneys' fees, 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	= \$ 2,250.00
--------------------------	---------------

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

FINRA Dispute Resolution Services previously deferred the non-refundable portion of Claimants' filing fee of \$ 750.00. Upon conclusion of the matter, the Panel determined to assess the fee.



**ARBITRATION PANEL**

Susanne J. Hollander	-	Public Arbitrator, Presiding Chairperson
Matthew D. Arbit	-	Public Arbitrator
Allen Greenberg	-	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**

***Susanne J. Hollander***

\_\_\_\_\_  
Susanne J. Hollander  
Public Arbitrator, Presiding Chairperson

***01/21/2022***

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

***Matthew D Arbit***

\_\_\_\_\_  
Matthew D. Arbit  
Public Arbitrator

***01/20/2022***

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

***Allen Greenberg***

\_\_\_\_\_  
Allen Greenberg  
Non-Public Arbitrator

***01/20/2022***

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

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.

January 21, 2022

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