

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Tobias A. Lenza

Case Number: 20-03698

vs.

Respondents
TD Ameritrade Clearing, Inc.
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. Members

This case was decided by an all-public panel.

REPRESENTATION OF PARTIES

For Claimant Tobias A. Lenza: Anthony A. Lenza, Jr., Esq., Amabile & Erman, P.C., Staten Island, New York.

For Respondents TD Ameritrade Clearing, Inc., and TD Ameritrade, Inc.: David S. Richan, Esq., Andrew B. Colman, Esq., and John D. Stewart, Esq., Baritz & Colman LLP, New York, New York; and James J. Vihstadt, Esq., TD Ameritrade, Inc., Omaha, Nebraska.

CASE INFORMATION

Statement of Claim filed on or about: November 2, 2020.

Amended Statement of Claim filed on or about: April 19, 2021.

Tobias A. Lenza signed the Submission Agreement: November 2, 2020.

Statement of Answer filed by Respondents on or about: December 23, 2020.

Statement of Answer to Amended Statement of Claim filed on or about: June 23, 2021.

TD Ameritrade Clearing, Inc. signed the Submission Agreement: December 22, 2020.

TD Ameritrade, Inc. signed the Submission Agreement: December 22, 2020.

CASE SUMMARY

In the Amended Statement of Claim, Claimant asserted the following causes of action: breach of contract; breach of implied duty of good faith and fair dealing; unauthorized trading; negligence;

and violation of FINRA rules. The causes of action relate to unspecified securities in Claimant's IRA account.

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

RELIEF REQUESTED

In the Amended Statement of Claim, Claimant requested compensatory and consequential damages, including the lower than "best market" stock liquidation and lost profits, in an amount that exceeds \$10,000,000.00; rescission of securities which were sold without authorization on October 22, 2020 and October 29, 2020; specific performance; punitive damages in an amount not less than \$2,000,000.00; interest on the losses sustained from the date of the losses; and attorneys' fees, costs, and expenses.

In the Statement of Answer to the Amended Statement of Claim, Respondents requested an award for dismissal of the Statement of Claim with prejudice; attorneys' fees and costs incurred in connection with defense of this matter; and such further relief as the Panel deems just and proper.

At the close of the hearing, Claimant requested damages for lost profit in the amount of \$17,053,328.00, or alternatively, damages in the amount of \$4,689,511.00.

OTHER ISSUES CONSIDERED AND DECIDED

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

On April 19, 2021, Claimant filed a Motion to Amend the Statement of Claim ("Motion"). On April 29, 2021, Respondents filed a response opposing Claimant's Motion. On April 30, 2021, Claimant filed a reply in further support of his Motion. On June 2, 2021, the Panel heard oral arguments on Claimant's Motion. On June 3, 2021, the Panel granted the Motion.

Respondents' co-counsel, John D. Stewart, Esq., appeared at the evidentiary hearing by videoconference.

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. Any and all claims for relief not specifically addressed herein, including any requests for rescission, specific performance, 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
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**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 parties, Respondents TD Ameritrade, Inc. and TD Ameritrade Clearing, Inc. are each assessed the following:

Member Surcharge	=\$ 3,600.00
Member Process Fee	=\$ 7,000.00

Discovery-Related Motion Fees

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

Three (3) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision	=\$ 600.00
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Claimant submitted one (1) discovery-related motion
Respondents submitted two (2) discovery-related motions

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 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 @ \$1,500.00/session		
Pre-Hearing Conferences: March 3, 2021	1 session	=\$ 4,500.00
June 2, 2021	1 session	
June 14, 2021	1 session	

Five (5) hearing sessions with the Panel @ \$1,500.00/session		=\$ 7,500.00
Hearings: July 27, 2021	2 sessions	
July 28, 2021	2 sessions	

July 29, 2021

1 session

Total Hearing Session Fees = \$ 12,000.00

The Panel has assessed \$6,000.00 of the hearing session fees to Claimant.

The Panel has assessed \$6,000.00 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

Mary Julia O'Connell	-	Public Arbitrator, Presiding Chairperson
Hashim Ghadiali	-	Public Arbitrator
John Warner Lowe, Jr.	-	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

Mary Julia O'Connell

Mary Julia O'Connell
Public Arbitrator, Presiding Chairperson

08/04/2021

Signature Date

Hashim Ghadiali

Hashim Ghadiali
Public Arbitrator

08/06/2021

Signature Date

John Warner Lowe, Jr.

John Warner Lowe, Jr.
Public Arbitrator

08/05/2021

Signature Date

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August 06, 2021

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