

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Kapil Bajaj, Peter Barker, Aly Gadalla,
Robert Head, Dorothy Head,
Hamza Hussain, Michelle Mullikin,
Kevin Jahed, Vasudeva Manepalli,
Jacob Meredith, Serhiy Musyakevych,
and Joel Yambo-Torres

Case Number: 20-04040

vs.

Respondent

E*Trade Securities LLC

Hearing Site: Houston, Texas

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 an all-public panel.

The evidentiary hearing was conducted partially by videoconference.

REPRESENTATION OF PARTIES

For Claimants Kapil Bajaj (“Bajaj”), Peter Barker (“Barker”), Aly Gadalla (“Gadalla”), Robert Head (“R. Head”), Dorothy Head (“D. Head”), Hamza Hussain (“Hussain”), Michelle Mullikin (“Mullikin”), Kevin Jahed (“Jahed”), Vasudeva Manepalli (“Manepalli”), Jacob Meredith (“Meredith”), Serhiy Musyakevych (“Musyakevych”), and Joel Yambo-Torres (“Yambo-Torres”) (collectively “Claimants”): Trenton Lacy, Esq. and Jeff M. Meyerson, Esq., The Meyerson Law Firm, P.C., Austin, Texas.

For Respondent E*Trade Securities LLC (“Respondent”): John Bersin, Esq. and Meredith Hoffman, Esq., E*Trade Securities LLC, Jersey City, New Jersey.

CASE INFORMATION

Statement of Claim filed on or about: December 14, 2020.

Claimants signed the Submission Agreement: December 11, 2020.

Statement of Answer filed on or about: February 16, 2021.

Respondent signed the Submission Agreement: February 16, 2021.

CASE SUMMARY

In the Statement of Claim, Claimants asserted the following causes of action: failure to comply with day-trading risk disclosure requirements; use of manipulative, deceptive, or other fraudulent devices; unsuitability; negligence; and gross negligence. The causes of action relate to allegations that Respondent freely and without warning sold to its unsophisticated retail customers an exchange traded note called 3x Long Crude Oil (UWT), a highly sophisticated investment designed only for professional day-traders, with significant risks.

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, Claimants requested compensatory economic damages; interest on all sums at the legal rate; additional or punitive damages as allowed by law; attorneys' fees, expert witness fees, and costs; and such other and additional relief as deemed just and proper.

In the Statement of Answer, Respondent requested an award dismissing all claims in the Statement of Claim; assessing all forum costs and expenses of this proceeding against Claimants; and granting Respondent all such other and further relief as the Panel may deem just and necessary.

At the hearing, Hussain, Mullikin, Manepalli, Meredith, and Yambo-Torres (collectively "Remaining Claimants") requested compensatory damages as follows: \$69,201.16 for Hussain; \$72,175.15 for Mullikin; \$73,001.49 for Manepalli; \$79,645.06 for Meredith; and \$37,400.78 for Yambo-Torres.

OTHER ISSUES CONSIDERED AND DECIDED

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

On February 16, 2021, Respondent filed a Motion to Sever, requesting that the Panel sever Claimants into separate actions, or alternatively, sever the claims of Gadalla and Meredith from the other Claimants. On February 25, 2021, Claimants filed a Response to the Motion to Sever. On March 2, 2021, Respondent filed a Reply in support of the Motion to Sever. At the Initial Prehearing Conference, the Panel heard oral arguments on the Motion to Sever. In an Order dated April 7, 2021, the Panel noted that during argument, Claimants' counsel stated that Gadalla's claim would be withdrawn from this arbitration and in the same Order, the Panel denied the Motion to Sever.

On May 20, 2021, Gadalla filed an Agreed Motion to Sever. In an Order dated May 22, 2021, the Panel granted the Agreed Motion to Sever. Accordingly, the Panel made no determination as to claims by Gadalla.

On September 24, 2021, Respondent filed a Motion for Sanctions against Musyakevych for failure to provide discovery and failure to comply with discovery orders. On October 5, 2021,

Respondent filed a follow-up correspondence reasserting its Motion for Sanctions. In an Order dated October 6, 2021, the Panel directed Musyakevych to produce documents in his possession and indicated that failure to do so would result in dismissal with prejudice of his claims in this matter.

On October 6, 2021, Bajaj, R. Head, D. Head, Jahed, and Musyakevych filed a motion to dismiss their claims without prejudice (“Motion to Dismiss Without Prejudice”). On October 7, 2021, Respondent filed an opposition to the Motion to Dismiss Without Prejudice. In an Order dated October 14, 2021, the Panel denied the Motion to Dismiss Without Prejudice.

Bajaj, Barker, R. Head, D. Head, Jahed, and Musyakevych did not appear at the hearing. At the hearing, Respondent made an oral motion requesting that the Panel dismiss with prejudice all claims by Bajaj, Barker, R. Head, D. Head, Jahed, and Musyakevych for failure to comply with previous orders of the Panel and for failure to appear at the hearing. On October 25, 2021 Respondent also filed correspondence supplementing its oral motion to dismiss. In an Order dated October 27, 2021, the Panel granted the oral motion to dismiss and dismissed with prejudice all claims of Bajaj, Barker, R. Head, D. Head, Jahed, and Musyakevych.

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. Remaining Claimants’ claims are denied in their entirety.
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 of Arbitration Procedure, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee = \$ 1,575.00

**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 = \$ 1,900.00
Member Process Fee = \$ 3,750.00

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 with one (1) Arbitrator @ \$200.00/decision = \$ 400.00

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

Respondent submitted three (3) discovery-related motions

Total Discovery-Related Motion Fees = \$ 1,000.00

The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Mullkin, Meredith, Musyakevych, and Yambo-Torres.

The Panel has assessed \$200.00 of the discovery-related motion fees jointly and severally to Bajaj, Barker, R. Head, D. Head, Hussain, Mullkin, Jahed, Manepalli, Meredith, Musyakevych, and Yambo-Torres.

The Panel has assessed \$600.00 of the discovery-related motion fees to Musyakevych.

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:

One (1) pre-hearing session with the Panel @ \$1,125.00/session = \$ 1,125.00
Pre-Hearing Conference: April 7, 2021 1 session

Six (6) hearing sessions @ \$1,125.00/session = \$ 6,750.00
Hearings: October 25, 2021 2 sessions
October 26, 2021 2 sessions
October 27, 2021 2 sessions

Total Hearing Session Fees = \$ 7,875.00

The Panel has assessed \$562.50 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$7,312.50 of the hearing session fees to Respondent.

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

ARBITRATION PANEL

Michael S. Yauch	-	Public Arbitrator, Presiding Chairperson
Francis Joseph Bourgeois	-	Public Arbitrator
Dwayne Nealy McClelland	-	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

Michael S. Yauch

Michael S. Yauch
Public Arbitrator, Presiding Chairperson

10/29/2021

Signature Date

Francis Joseph Bourgeois

Francis Joseph Bourgeois
Public Arbitrator

10/29/2021

Signature Date

Dwayne Nealy McClelland

Dwayne Nealy McClelland
Public Arbitrator

10/29/2021

Signature Date

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October 29, 2021

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