

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

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In the Matter of the Arbitration Between:

Claimant  
Michelle Legatzke IRA

Case Number: 21-00395

vs.

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

Hearing Site: Reno, Nevada

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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. Members

**REPRESENTATION OF PARTIES**

For Claimant Michelle Legatzke IRA (“Claimant”): David Liebrader, Esq., The Law Offices of David Liebrader, APC, Las Vegas, Nevada.

For Respondents TD Ameritrade Clearing, Inc. and TD Ameritrade, Inc. (collectively, “Respondents”): Erinn M. Maguire, Esq., Miles & Stockbridge P.C., Baltimore, Maryland.

**CASE INFORMATION**

Statement of Claim filed on or about: February 13, 2021.  
Claimant signed the Submission Agreement: February 5, 2021.

Statement of Answer filed by Respondents on or about: April 21, 2021  
TD Ameritrade Clearing, Inc. signed the Submission Agreement: April 21, 2021.  
TD Ameritrade, Inc. signed the Submission Agreement: April 21, 2021.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted causes of action for breach of fiduciary duty and negligence. The causes of action relate to Claimant’s investment in the Nevada Gardenville Ranch, LLC.

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

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Compensatory damages in an amount not less than \$268,215.00;
2. Consequential damages in an amount according to proof;
3. Pre-award and Post-award interest at the maximum rate allowed by law from the date of the original investment; and
4. Costs and expenses, including reasonable attorneys' fees, expert witness fees and another other costs deemed reasonable.

In the Statement of Answer, Respondents requested that all claims by Claimant be denied in their entirety and dismissed.

**OTHER ISSUES CONSIDERED AND DECIDED**

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

On May 6, 2021, Respondents filed a Motion to Dismiss pursuant to Rule 12504 and 12206 of the Code of Arbitration Procedure ("Code"). On June 18, 2021, Claimant filed a response opposing the Motion to Dismiss. On June 23, 2021, Respondents filed a reply in support of their Motion to Dismiss. On July 28, 2021, the Panel heard oral arguments on the Motion to Dismiss and granted the Motion to Dismiss on the grounds that:

Respondents prevailed in their argument that the dispute was not eligible for arbitration because the event that gave rise to the dispute, Claimant's transfer of her IRA funds from her account with Respondents, occurred more than six years prior to the filing of the Statement of Claim.

Respondents' Motion to Dismiss pursuant to Rule 12206 of the Code is granted by the Panel without prejudice to any right Claimant has to file in court; Claimant is not prohibited from pursuing his/her claims in court pursuant to Rule 12206(b) of the Code.

**AWARD**

After considering the pleadings, the Motion to Dismiss and all responses thereto, and the arguments presented during the July 28, 2021 pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are dismissed without prejudice pursuant to Rule 12206(b) of Code.

**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 = \$ 1,425.00

*\*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 parties, Respondents are each assessed the following:

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

**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:

Two (2) pre-hearing sessions with the Panel @ \$1,125.00/session	= \$	2,250.00
Pre-Hearing Conferences: June 9, 2021	1 session	
July 28, 2021	1 session	

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Total Hearing Session Fees	= \$	2,250.00
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The Panel has assessed \$562.50 of the hearing session fees to Claimant.

The Panel has assessed \$1,687.50 of the hearing session fees jointly and severally to Respondents.

**ARBITRATION PANEL**

Peter H. Daly	-	Public Arbitrator, Presiding Chairperson
Laurel Littman Gothelf	-	Public Arbitrator
Lesley Ann Troope	-	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**

***Peter H. Daly***

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Peter H. Daly  
Public Arbitrator, Presiding Chairperson

**08/13/2021**

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

***Laurel Littman Gothelf***

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Laurel Littman Gothelf  
Public Arbitrator

**08/12/2021**

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

***Lesley Ann Troope***

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Lesley Ann Troope  
Public Arbitrator

**08/13/2021**

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

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August 13, 2021

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