

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Gary Zimmerman

Case Number: 21-01425

vs.

Respondent
TD Ameritrade, Inc.

Hearing Site: Dallas, 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: Customer vs. Member

The evidentiary hearing was conducted by videoconference.

REPRESENTATION OF PARTIES

For Claimant Gary Zimmerman (“Claimant”): Bryan T. Forman, Esq., Forman Law Firm, P.C., Austin, Texas.

For Respondent TD Ameritrade, Inc. (“Respondent”): James J. Vihstadt, Esq., TD Ameritrade, Inc., Omaha, Nebraska.

CASE INFORMATION

Statement of Claim filed on or about: June 3, 2021.

Claimant signed the Submission Agreement: June 1, 2021.

Statement of Answer filed on or about: July 22, 2021.

Respondent signed the Submission Agreement: July 22, 2021.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: breach of fiduciary duty, including but not limited to a breach of the duty of loyalty; breach of contract; negligence; breach of duty of good faith and fair dealing; and negligence and breach of duties in violation of industry rules and standards and conduct, including but not limited to violation of FINRA Rules 5330, 5310, 2010, 3110, 3120, and 3130, breach of good faith and fair dealing, and violation of Regulation T. The causes of action relate to allegations that Respondent failed to cancel Claimant’s market order to buy shares of Whiting Petroleum, Inc. (WLL).

Unless specifically admitted in the Statement of Answer, Respondent denied the allegations made in the Statement of Claim.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested more than \$56,845.15 in account losses, including all actual, economic, expectancy, direct and special damages, consequential damages, market adjusted damages, and equitable remedies derivative of Respondent's conduct; tax consequences; forum fees, expenses, and costs; attorneys' fees; prejudgment and post judgment interest on all actual damages; and any other relief, general or special, at law or in equity, which the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that the Statement of Claim be denied and that all costs be assessed against Claimant.

At the hearing, Claimant requested total damages of \$131,382.45.

OTHER ISSUES CONSIDERED AND DECIDED

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

The Arbitrator has provided an explanation of the decision in this award. The explanation is for the information of the parties only and is not precedential in nature.

EXPLAINED DECISION

Claimant was not diligent in researching WLL before he placed the order to purchase the stock. However, with the circumstances existing regarding the WLL stock (trading halted and a reverse split) and Claimant not having adequate funds in his account, Respondent breached the duties owed to Claimant under FINRA Rules and its contract with Claimant by not reviewing and confirming the order with Claimant, before routing the order.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimant the sum of \$62,000.00 in compensatory damages.
2. Respondent is liable for and shall pay to Claimant interest on the above-stated sum at the rate of 5% per annum from the date of the Award through and including date the Award is paid in full.
3. Respondent is liable for and shall pay to Claimant the sum of \$24,000.00 in attorneys' fees pursuant to Texas Civ. Prac. & Rem. Code 38.001 and the contract of the parties.

4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, 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 = \$ 975.00

**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 = \$ 1,100.00

Member Process Fee = \$ 2,250.00

Late Pre-Hearing Cancellation Fees

Fees apply when a pre-hearing conference is cancelled within three business days of the scheduled conference:

December 3, 2021, cancellation requested by the parties = \$ 100.00

Total Late Pre-Hearing Cancellation Fees = \$ 100.00

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation to Claimant.

The Arbitrator has assessed \$50.00 of the late pre-hearing cancellation fees to Respondent.

Discovery-Related Motion Fees

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

One (1) decision on a discovery-related motion on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 200.00

Claimant submitted one (1) discovery-related motion

Total Discovery-Related Motion Fees = \$ 200.00

The Arbitrator has assessed the total discovery-related motion fees to Respondent.

Hearing Session Fees and Assessments

The Arbitrator has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, which lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) pre-hearing sessions @ \$450.00/session		= \$	900.00
Pre-Hearing Conferences: September 13, 2021	1 session		
January 25, 2022	1 session		
Five (5) hearing sessions @ \$450.00/session		= \$	2,250.00
Hearings: February 22, 2022	2 sessions		
February 23, 2022	2 sessions		
February 24, 2022	1 session		
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Total Hearing Session Fees		= \$	3,150.00

The Arbitrator has assessed \$450.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$2,700.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Lawrence R. Maxwell, Jr.

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Sole 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.

Arbitrator's Signature

Lawrence R. Maxwell, Jr.

03/16/2022

Lawrence R. Maxwell, Jr.
Sole Public Arbitrator

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.

March 16, 2022

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