

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimant
Matthew Simmons

Case Number: 20-03160

vs.

Respondent
TD Ameritrade, Inc.

Hearing Site: Boston, Massachusetts

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

Claimant Matthew Simmons appeared pro se.

For Respondent TD Ameritrade, Inc.: James J. Vihstadt, TD Ameritrade, Inc., Omaha, Nebraska.

CASE INFORMATION

Statement of Claim filed on or about: September 11, 2020.
Matthew Simmons signed the Submission Agreement: September 9, 2020.

Statement of Answer and Counterclaim filed by Respondent on or about: November 5, 2020.
TD Ameritrade, Inc. signed the Submission Agreement: November 5, 2020.

CASE SUMMARY

In the Statement of Claim, Claimant asserted the following causes of action: negligence; breach of contract; and breach of the covenant of good faith and fair dealing. The causes of action relate to Nvidia stock.

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

In the Counterclaim, Respondent asserted the following cause of action: breach of contract.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested: \$100,000.00 in damages and an order preventing Respondent from seeking to collect any account deficiency from Claimant.

In the Statement of Answer and Counterclaim, Respondent requested that the Statement of Claim be denied; \$20,157.42 in compensatory damages; interest at the contractual (margin) rate from March 9, 2020 until the date of entry of the award; and post-award interest from the date of the award until it is paid in full.

At the hearing, Claimant requested \$96,347.00 in damages.

OTHER ISSUES CONSIDERED AND DECIDED

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

On September 24, 2021 Claimant made a request for an explained decision pursuant to Rule 12904(g) of the Code. On September 30, 2021 Respondent joined in Claimant's request.

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.

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. Claimant's claims are denied in their entirety.
2. Claimant is liable for and shall pay to Respondent the sum of \$20,157.42 in compensatory damages.
3. Any and all claims for relief not specifically addressed herein are denied.

EXPLANATION OF DECISION

This case arises out of a margin call generated by the expiration of options that were not liquidated on expiration day. The options were filled by Respondent in Claimant's margin account. A precipitous decline in the underlying stock resulted in liquidation and the creation of a negative balance of \$20,157.42 in the margin account. Claimant alleges that Respondent's action improperly created the margin deficit and sought damages of \$100,000.00 (later amended to \$96,347.00). Claimant is an experienced options trader who had an active self-directed account with Respondent. Claimant, for his argument, relies primarily on a footnote into the following sentence in an email from Respondent to justify his position:

"Ensure you have adequate money in your account to carry any stock positions if there is an exercise or assignment of your options"

*Footnote: *As a reminder, in accordance with the Options Clearing Corporation instructions we will automatically exercise long options...provided the account has sufficient funds to carry the resulting stock positions..."

In actuality, the sell-out was in accordance with the terms of Claimant's margin agreement which gave Respondent the right to liquidate all or part of his account without prior notice in order to protect both Claimant's and Respondent's interests. In fact, Claimant had over \$80,000.00 in equity in his account at the time of expiration. Claimant made no effort to contact Respondent in the period prior to the buy in and stated during the hearing that he was indecisive, made a mental mistake, and failed to realize that the underlying stock might not hold value. The losses in the account occurred because Claimant failed to take action in his self-directed account. As an experienced option trader, Claimant is responsible for knowing the terms and risks of his trading. Accordingly, the claim fails, and Respondent is entitled to recover on its counterclaim.

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	= \$ 975.00
Counterclaim Filing Fee	= \$ 1,050.00

**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 that employed the associated person at the time of the events 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

Postponement Fees

Postponements granted during these proceedings for which fees were assessed or waived:

August 11, 2021, postponement requested by parties	Waived
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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 with a single Arbitrator @ \$450.00/session	= \$ 900.00
Pre-Hearing Conferences: January 13, 2021 1 session	
September 14, 2021 1 session	
One (1) hearing session @ \$450.00/session	= \$ 450.00

Hearing: October 19, 2021 1 session

Total Hearing Session Fees	= \$	1,350.00
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The Arbitrator has assessed \$450.00 of the hearing session fees to Claimant.

The Arbitrator has assessed \$900.00 of the hearing session fees to Respondent.

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

ARBITRATOR

Edward W. Morris, 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

Edward W. Morris, Jr.

Edward W. Morris, Jr.
Sole Public Arbitrator

10/29/2021

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.

October 29, 2021

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