


**FINRA Dispute Resolution
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Number of Pages including the Cover Sheet: _____

Date: 01/11/2011


Case Number: 09-03880

Case Name: Dan Salamie vs. TD Ameritrade, Inc. and Bruce P. Conrad

To: William V. DePaulo Phone: 304-342-5588 Fax: 304-342-5505
Dana F. Eddy Phone: 304-720-4392 Fax: 304-345-3083
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From: Alma Toplic
Case Administrator

Message:

This facsimile transmission is intended only for the addressee(s) shown above. It may contain information that is privileged, confidential, or otherwise protected from disclosure. Any review, dissemination or use of this transmission or its contents by persons other than addressee is strictly prohibited. If you have received this transmission in error, please notify us immediately by telephone at the above number.



January 11, 2011

Dana F. Eddy, Esq.
The Eddy Law Office
122 Capitol Street
Suite 300
Charleston, WV 25301

Subject: FINRA Dispute Resolution Arbitration Number 09-03880
Dan Salamie vs. TD Ameritrade, Inc. and Bruce P. Conrad

Dear Mr. Eddy:

In accordance with the Code of Arbitration Procedure I enclose the decision reached by the arbitrator(s) in the above-referenced matter.

Responsibility to Pay Monetary Award

Pursuant to the Code of Arbitration Procedure¹ the responsible party must pay any monetary awards within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. If an award is not paid within 30 days, the responsible party must pay post-judgment interest at the legal rate or as provided in the award by the arbitrator(s).

Tracking Payment of Award

FINRA Dispute Resolution has implemented a system of monitoring and tracking compliance with arbitration awards by members and associated persons. We request prevailing claimants to notify us in writing when their awards have not been paid within 30 days of receipt of the award, and require member firms to certify in writing that they have complied with awards against them or their associated persons.

Written notification concerning award compliance or lack thereof must be directed to:

Avichai Badash
FINRA Dispute Resolution
One Liberty Plaza
165 Broadway, 52nd Floor

¹Customer Code Rule 12904
Industry Code Rule 13904
Old Code Rule 10330(h)

New York, NY 10006
212-858-4325 (tel) 301-527-4739 (fax)

Expedited Suspension Proceedings for Non-Payment of Awards

Members and associated persons who do not comply with an award in a timely manner are subject to expedited suspension proceedings as set forth in Rule 9554.

Right to File Motion to Vacate Award

All awards are **final** and are not subject to review or appeal by the arbitration panel or by FINRA Dispute Resolution. Any party wishing to challenge the award must make a motion to vacate the award in a **federal or state court** of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 10, or applicable state statute. There are limited grounds for vacating an arbitration award, and a party must bring a motion to vacate within the time period specified by the applicable statute. Parties and counsel should consult federal and state statutes and case law to determine the appropriate court, standards, and time limitations in their individual circumstances. FINRA Dispute Resolution is not authorized to provide legal advice concerning a motion to vacate.

A motion to vacate, confirm, or modify an arbitration award is a matter only between the parties to the arbitration. FINRA Dispute Resolution is not a proper party to post-award motions and should not be named as a party to any post-award motion. However, for cases filed on or after April 12, 2004, if the award contains expungement relief, or if a party seeks expungement relief in court, there may be a duty to name FINRA as a party as provided in Rule 2080.

Questions Concerning Award

Please direct any questions regarding this award to me. **The parties must not contact the arbitrators directly.**

Forum Fees

You will receive under separate cover an invoice that reflects the fees assessed and any outstanding balance or refund due. **Fees are due and payable to FINRA Dispute Resolution upon receipt of the invoice and remitted to the address specified on the invoice.**

Any applicable refunds will also be sent under separate cover approximately 45 days after the case closes. Pursuant to the Code of Arbitration Procedure, "Any refunds of fees or costs incurred under the Code will be paid directly to the named parties, even if a non-party made payment on behalf of the named parties."²

All questions regarding payment of fees and refunds should be directed to FINRA Finance at (240) 386-5910.

Arbitration Evaluation

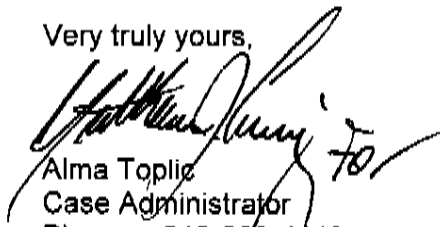
As a service organization, the primary goals of FINRA Dispute Resolution are the integrity of its process and the satisfaction of its clients. To ensure that we are meeting your needs and

² Customer Code Rule 12902(e)
Industry Code Rule 13902(e)

satisfying our commitment to you, **we need to hear from you.** If you have not already done so, please take the time to complete an evaluation of our services, the process, and the arbitrator(s) assigned to your case. For your convenience, we have now made it possible for you to evaluate our services using the Internet. Please direct your Web browser to <http://www.finra.org/arbevaluation>.

If you do not have Internet access, or have difficulty completing the evaluation form online, we will send a hard copy evaluation form to you. The completed evaluation form should be mailed in to the address indicated below. If you need a hard copy of the evaluation form, please contact the undersigned. Whenever possible, however, we encourage you to use the new online version, as it will help us to review your feedback in a more expeditious manner. Your feedback is a valuable and necessary component in our efforts to serve you better.

Very truly yours,



Alma Toplic
Case Administrator
Phone: 312-899-4440
Fax: 301-527-4857
Alma.Toplic@finra.org

AS1:gcg:LC09A
idr: 08/25/2009

RECIPIENTS:

William V. DePaulo, Esq., Bruce P. Conrad
179 Summers Street, Suite 232, Charleston, WV 25301-2163

Dana F. Eddy, Esq., Dan Salamie
The Eddy Law Office, 122 Capitol Street, Suite 300, Charleston, WV 25301

James J. Vihstadt, Esq., TD Ameritrade, Inc.
TD Ameritrade, Inc., 4211 South 102nd Street, Omaha, NE 68127

AWARD
FINRA Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Dan Salamie

vs.

Case Number: 09-03880

Hearing Site: Charleston, West Virginia

Names of Respondents

TD Ameritrade, Inc., and
Bruce P. Conrad

NATURE OF THE DISPUTE

Customer vs. Member and Non-Member

REPRESENTATION OF PARTIES

Dan Salamie ("Claimant") was represented by Richard Neely, Esq., Neely & Callaghan, Charleston, West Virginia until on or about April 30, 2010. Claimant was represented by G. Martin Cole, Esq. and Lindsay M. Hurni, Esq., Burt, Blee, Dixon, Sutton & Bloom, LLP, Fort Wayne, Indiana until on or about October 1, 2010. After that date, Claimant was represented by Dana F. Eddy, Esq., The Eddy Law Office, Charleston, West Virginia.

TD Ameritrade, Inc. ("TD Ameritrade") was represented by James J. Vihstadt, Esq., TD Ameritrade, Inc., Omaha, Nebraska.

Bruce P. Conrad ("Conrad") was represented by William V. DePaulo, Esq., Charleston, West Virginia.

CASE INFORMATION

The Statement of Claim was filed on or about June 24, 2009. The Submission Agreement of Claimant, Dan Salamie, was signed on or about June 8, 2009.

The Statement of Answer and Motion to Stay was filed by Respondent, TD Ameritrade, Inc., on or about August 25, 2009. The Submission Agreement of Respondent, TD Ameritrade, Inc. was signed on or about August 23, 2009.

The Statement of Answer was filed by Respondent, Bruce P. Conrad, on or about August 26, 2009. The Submission Agreement of Respondent, Bruce P. Conrad, was signed on or about August 25, 2009.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; omission of facts; suitability; and failure to supervise. The causes of action related to the purchase of unspecified mortgage-backed securities and indexed stocks. Claimant alleged that Conrad neglected to follow Claimant's investment objective when he invested in aggressive index funds and mortgage-backed securities, which resulted in a financial loss to Claimant. Claimant further alleged that TD Ameritrade failed to supervise Conrad and provide quality control.

Unless specifically admitted in its Answer, TD Ameritrade denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: TD Ameritrade did not exercise control over Conrad as he was not employed by, or associated with, TD Ameritrade or its predecessors; Claimant offered no real evidence to his allegation that he directed his agent to convert the totality of his holdings just prior to market declines; and the claims against TD Ameritrade lacked credibility, ignored the plain language of Claimant's agreement, and otherwise are without merit.

Unless specifically admitted in his Answer, Conrad denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant's losses were due to a market crash that no one, exercising due diligence, could have foreseen, and in fact did not foresee; Conrad never held himself out to Claimant or anyone else as a representative, joint venturer, agent or servant of TD Ameritrade; and Claimant is barred by one or more of the following legal doctrines and principles: assumption of risk, contributory negligence, estoppel, laches, and waiver.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$835,000.00
Exemplary/Punitive Damages	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At the close of the hearing, Claimant requested that interest from the date of Claimant's report of the alleged losses through and including the date of the Award be included in his request for relief.

TD Ameritrade requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Conrad requested that the claims asserted against him be denied in their entirety and that he be awarded his costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

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

On or about April 15, 2010, Claimant filed a Motion to Compel Discovery and for Sanctions. On or about April 25, 2010, Conrad filed a Motion for Sanctions for Intentional Discovery Violations and Response to Claimant's Motion to Compel. On or about April 29, 2010, Claimant filed a Response to Conrad's Motion for Sanctions for Intentional Discovery Violation and Response to Claimant's Motion. On or about May 3, 2010, Conrad filed a Reply to Claimant's Response.

On or about May 11, 2010, Claimant filed a Motion to Amend the Statement of Claim to Add a Party. On or about May 24, 2010, Conrad filed a Response to Claimant's Motion to Amend to Add a Party. On or about May 28, 2010, TD Ameritrade filed a Response to Claimant's Motion to Amend the Statement of Claim to Add a Party.

On or about May 21, 2010, TD Ameritrade filed a Motion to Amend its Answer to the Statement of Claim.

On or about May 24, 2010 Conrad filed a Motion for Summary Judgment. On or about June 4, 2010, Claimant filed a Response to Conrad's Motion for Summary Judgment.

On or about May 24, 2010, Claimant submitted a Request for an Explained Decision. Respondents did not file responses.

In its Order dated May 28, 2010, the Panel took the issue of sanctions under advisement, and reserved ruling on the issue of sanctions for a later date.

In its Order dated June 8, 2010, the Panel denied Conrad's Motion for Summary Judgment, and denied Claimant's Motion to Amend the Statement of Claim to Add a Party.

In its Order dated June 9, 2010, the Panel denied TD Ameritrade's Motion to Amend its Statement of Answer as untimely.

In its Order dated June 10, 2010, the Panel granted Claimant's Request for an Explained Decision.

On or about June 14, 2010, Claimant filed a Request for Certain Witnesses to Appear by Telephone. The Panel determined that the Request should be introduced at the commencement of the hearing on June 15, 2010. At the hearing, the Panel granted Claimant's Request for Certain Witness to Appear by Telephone.

At the close of Claimant's case-in-chief, TD Ameritrade and Conrad each moved for dismissal.

In its Order dated June 22, 2010, the Panel granted TD Ameritrade's Motion to Dismiss and provided that TD Ameritrade may present evidence concerning its claim for attorneys' fees and costs during the remaining damage phase of hearing. In its Order, the Panel overruled Conrad's Motion to Dismiss and provided that Conrad may commence the presentation of evidence in his defense when the hearing reconvenes.

On or about September 28, 2010, TD Ameritrade submitted Evidence Regarding its Claim for Attorneys' Fees and Costs Pursuant to the Panel's June 22, 2010 Order.

In its Order dated October 29, 2010, the Panel ruled:

1. At the conclusion of the first hearing session, Claimant completed his case and rested. Conrad and TD Ameritrade moved for dismissal and TD Ameritrade's Motion was granted. The hearing will reconvene and begin with the Direct Case of Respondent Bruce Conrad. After conclusion of any cross examination and rebuttal evidence, the matter will be submitted.
2. The hearing will reconvene at 9am on December 16, 2010 and continue on December 17, 2010.
3. While TD Ameritrade has been dismissed from the case it has a continuing claim for costs and attorneys' fees and will remain in the case for that purpose and copies of all notices and pleadings shall be served upon its counsel.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

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

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) TD Ameritrade, Inc. is awarded \$8,646.59 as fees and costs in connection with its Motion to Dismiss from Dan Salamie. As a result of

the Panel's May 28, 2010 Order on Claimant's Motion to Compel Discovery and for Sanctions, Dan Salamie is awarded \$1,376.00 as a sanction against TD Ameritrade, Inc. Therefore, Claimant, Dan Salamie, is liable for and shall pay to Respondent TD Ameritrade, Inc., the net sum of \$7,270.59 in fees and costs;

- 3.) TD Ameritrade, Inc.'s Request for Attorneys' Fees is hereby denied and dismissed with prejudice;
- 4.) Bruce P. Conrad's Request for Sanctions is hereby denied and dismissed with prejudice;
- 5.) Other than Hearing Session Fees which are specified below, and the costs specified above, the parties shall each bear their own costs and expenses incurred in this matter; and
- 6.) Any relief not specifically enumerated, including punitive damages and any other request for attorneys' fees, is hereby denied with prejudice.
- 7.) Explained decision: Claimant's case was based on an alleged conversation between Claimant and Conrad in which specific instructions were relayed concerning the account, which Conrad failed to follow. The alleged call was placed on Claimant's cell phone October 18, 2007 from a pizza parlor. The Statement of Claim alleged that Conrad's failure to follow the alleged instructions resulted in Claimant's damages. During the hearing, Claimant testified as to the details of the conversation on numerous occasions during the hearing. Several times in direct response to specific inquiry from the Panel, Claimant provided differing versions of the conversation, which were inconsistent, and in some instances contradictory. As a result, the Panel unanimously determined to reject Claimant's testimony on the issue based on a lack of credibility.

If the Arbitrators have provided an explanation of their decision in this Award, the explanation is for the information of the parties only and is not precedential in nature.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution 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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, as a party, TD Ameritrade, Inc. is assessed the following:

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00

Adjournment Fees

Adjournments granted during these proceedings:

October 26-27, 2010, adjournment requested by Claimant	= \$ 1,200.00
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Hearing Session Fees and Assessments

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

Four (4) Pre-hearing sessions with Panel x \$1,200.00	= \$ 4,800.00
Pre-hearing conferences:	
November 12, 2009	1 session
May 24, 2010	1 session
June 7, 2010	1 session
October 29, 2010	1 session
Twelve (12) Hearing sessions x \$1,200.00	= \$ 14,400.00
Hearing Dates:	
June 15, 2010	2 sessions
June 16, 2010	2 sessions
June 17, 2010	2 sessions
June 18, 2010	2 sessions
December 16, 2010	2 sessions
December 17, 2010	2 sessions
Total Hearing Session Fees	= \$ 19,200.00

The Panel has assessed \$15,600.00 of the hearing session fees to Dan Salamie.

The Panel has assessed \$2,400.00 of the hearing session fees to TD Ameritrade, Inc.

FINRA Dispute Resolution
Arbitration No. 09-03880
Award Page 7 of 7

The Panel has assessed \$1,200.00 of the hearing session fees to Bruce P. Conrad.

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

ARBITRATION PANEL

W. Sean Kelleher – Public Arbitrator, Presiding Chair
W. Michael Frazier – Public Arbitrator
Randy Cepuch - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

/s/ W. Sean Kelleher
W. Sean Kelleher
Public Arbitrator, Presiding Chair

January 10, 2011
Signature Date

/s/ W. Michael Frazier
W. Michael Frazier
Public Arbitrator

January 10, 2011
Signature Date

/s/ Randy Cepuch
Randy Cepuch
Non-Public Arbitrator

January 9, 2011
Signature Date

January 11, 2011
Date of Service (For FINRA office use only)


FINRA Dispute Resolution
Arbitration No. 09-03880
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The Panel has assessed \$1,200.00 of the hearing session fees to Bruce P. Conrad.
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

W. Sean Kelleher – Public Arbitrator, Presiding Chair
W. Michael Frazier – Public Arbitrator
Randy Cepuch - Non-Public Arbitrator

Concurring Arbitrators' Signatures:


W. Sean Kelleher
Public Arbitrator, Presiding Chair

1-10-2011
Signature Date

W. Michael Frazier
Public Arbitrator

Signature Date

Randy Cepuch
Non-Public Arbitrator

Signature Date

Date of Service (For FINRA office use only)

FINRA Dispute Resolution
Arbitration No. 08-03880
Award Page 7 of 7

The Panel has assessed \$1,200.00 of the hearing session fees to Bruce P. Conrad.
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

ARBITRATION PANEL

W. Sean Kelleher – Public Arbitrator, Presiding Chair
W. Michael Frazier – Public Arbitrator
Randy Cepuch - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

W. Sean Kelleher
Public Arbitrator, Presiding Chair

W. Michael Frazier
Public Arbitrator

Randy Cepuch
Non-Public Arbitrator

Signature Date

Signature Date

Signature Date

Date of Service (For FINRA office use only)

FINRA Dispute Resolution
Arbitration No. 09-03800
Award Page 7 of 7

The Panel has assessed \$1,200.00 of the hearing session fees to Bruce P. Conrad.

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

ARBITRATION PANEL

W. Sean Kelleher – Public Arbitrator, Presiding Chair
W. Michael Frazier – Public Arbitrator
Randy Cepuch - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

W. Sean Kelleher
Public Arbitrator, Presiding Chair

Signature Date

W. Michael Frazier
Public Arbitrator

Signature Date

Randy Cepuch

Randy Cepuch
Non-Public Arbitrator

1/7/2011

Signature Date

Date of Service (For FINRA office use only)