

Before
FINRA DISPUTE RESOLUTION, INC.

X

DAVID DE GROOT,

Claimant,

- against -

E*TRADE SECURITIES LLC

Respondent.

X

FINRA-DR Case No.
13-00119

**ANSWER OF
E*TRADE SECURITIES**

TO THE ARBITRATOR:

Respondent E*TRADE SECURITIES LLC ("E*TRADE"), by its undersigned counsel, hereby submits this ANSWER to the Statement of Claim in the above-captioned case.

Unless specifically admitted, E*TRADE denies the allegations in the Statement of Claim.

I. Introduction.

Claimant alleges that Respondent mishandled Claimant's sale of his Apple stock in September 2012. However, Claimant not only placed, but also **confirmed** the order to sell all of his Apple shares. Claimant's own actions caused his loss. As set forth more fully below, Respondent cannot be held liable as a matter of law. For these reasons, Respondent respectfully requests dismissal of this claim.

II. Background.

E*TRADE Securities, LLC ("E*TRADE") is an electronic, on-line discount brokerage that offers order execution services for low commission prices

compared to traditional broker-dealers. The vast majority of E*TRADE's customers conduct business through E*TRADE's website or Interactive Voice Response ("IVR") System, without ever speaking directly to a broker or a customer service representative. E*TRADE communicates its policies and procedures through its website.

Claimant is an employee of Apple Inc. (NASD: AAPL). Apple Inc. entered into an agreement with E*TRADE (through E*TRADE Financial Corporate Services) to administer Apple's Employee Stock Purchase Program. Apple employees, like Claimant, opened retail brokerage accounts with E*TRADE in order to receive, hold, and sell their Apple stock.

When Claimant opened his account, he agreed that all activities in his account would be self-directed; meaning that he alone would be responsible for his investment decisions. Claimant expressly agreed to these terms when he activated his account in December 2008:

I ACKNOWLEDGE THAT I ALONE AM RESPONSIBLE FOR DETERMINING THE SUITABILITY OF MY INVESTMENT CHOICES IN LIGHT OF MY PARTICULAR CIRCUMSTANCES. I UNDERSTAND THAT E*TRADE SECURITIES ASSUMES NO RESPONSIBILITY FOR SUCH DETERMINATION. As a self-directed investor, I assume full responsibility for each and every transaction in or for my Account and for my own investment strategies and decisions. I understand and agree that E*TRADE Securities and its affiliates will have no liability whatsoever for the results of my investment strategies, transactions and decisions.

See § 5 of Customer Agreement attached as **Exhibit A** (emphasis in original).

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III. Statement of Facts.

Claimant, an employee of Apple Inc., opened his E*TRADE account in order to participate in Apple's Employee Stock Purchase Program ("ESPP"). On September 7, 2012, Claimant held 119 shares of Apple that he had acquired periodically from December 2008 through July 2012.

On September 9, 2012, Claimant dialed in to E*TRADE's Interactive Voice Response ("IVR") System. The IVR system is a voice recognition and touch-tone phone system that provides customers with a quick and efficient method of accessing account information and placing orders in their accounts.

At 12:29:44 on September 9, 2012, Claimant indicated to the IVR system that he wished to sell shares in his ESPP account. When asked how many shares he wished to sell, Claimant replied "sell all my shares." Claimant indicated that he wanted to place a market order to sell his shares. Claimant also indicated that he wished to receive the proceeds of his sale by check. The order to sell 119 shares of AAPL was placed at 12:30:56 and the execution was reported back to E*TRADE at 12:30:57. A copy of the call log is attached hereto as **Exhibit B**. A copy of the order detail is attached hereto as **Exhibit C**.

Important to this arbitration is the fact that, before placing the order, E*TRADE's IVR system asked Claimant to confirm the order. Claimant would have had to say "Yes" or press the "1" key on his telephone to confirm the order. Further, at any time during the call, Claimant could have asked the system to "go back" or asked for a Customer Service Representative to assist in placing his

trade. Additionally, Claimant could have logged into E*TRADE's website and placed his order online as he had done in the past.

The trade settled on September 12, 2012 and a check in the amount of \$80,915.25 was mailed to Claimant.

Claimant's transaction was completed as instructed and confirmed.

IV. Argument in Response.

The Statement of Claim makes three allegations that are patently false.

First, the Statement of Claim alleges that "E*TRADE ... relies on its computer's translation of spoken words to determine whether a particular instruction was given." As set forth above, this is decidedly not the case. Upon entry of an order, the IVR system repeats the order back to the customer. The customer then must confirm the order by saying "yes" or pressing the "1" key on the telephone. Claimant confirmed the order that he placed.

Second, the Statement of Claim suggests that E*TRADE has somehow engaged in the spoliation of evidence. On page 5, Claimant asserts that "E*TRADE affirmatively chose not to maintain the voice recording that would settle the matter." In fact, E*TRADE does not record calls in the IVR system. The IVR system receives between 5,000 and 25,000 calls per day.¹ Recording each and every call would be cost prohibitive, particularly given that the system confirms each order before the order is placed.

Third, the Statement of Claim asserts that E*TRADE somehow sold shares that Claimant was required to hold. This allegation is patently false and misleading. There is no forced holding period for Claimant's shares. Claimant

¹ On September 7, 2012, the system received over 20,000 calls.

was free to sell his shares as soon as they deposited into his account. The tax ramifications of a particular transaction are separate and distinct for each individual customer. E*TRADE does not give tax advice and would not prevent a brokerage customer from making a self-directed trade solely because of tax consequences.

Finally, Claimant's damages are uncertain and overstated. Claimant sold 119 shares of Apple at \$680.143 per share on September 7, 2012. Claimant elected to repurchase 116 shares on September 18, 2012 at \$698.506 per share. As of the date of this answer, Apple is trading at approximately \$430.00 per share. But for the fact that he elected to repurchase 116 shares, Claimant would currently be in a better position having sold all of his shares than having sold the 5 shares he now claims he wished to sell.

V. Conclusion.

Respondent is not responsible for Claimant's losses. Rather, Claimant's own decision-making caused his loss – if any. For the foregoing reasons, Claimant's claim should be dismissed.

WHEREFORE, Respondent respectfully request that an Order be issued against Claimant:

- a. Denying all claims in the Statement of Claim;
- b. Assessing the costs and expenses of this proceeding against Claimant;
- c. Granting Respondent all such other and further relief as this Panel may deem just and necessary.

Date: March 11, 2013

Respectfully Submitted,



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contacting the delivering firm directly, I am responsible for ensuring that such transfer is initiated properly and that E*TRADE Securities' instructions are given to the delivering firm in exactly the form required by E*TRADE Securities for identification of me and my Account for proper transaction posting. I understand that any erroneous, mismatched, or incomplete identifying information on an incoming or outgoing transfer may result in such transfer being rejected, lost, posted to an incorrect account, or returned to the originating firm without notice to me, and I agree to indemnify and hold E*TRADE Securities and its affiliates harmless from and against any Losses arising out of or relating to: (i) any erroneous, mismatched, or incomplete identifying information on a transfer; and (ii) any transfer for which E*TRADE Securities is in compliance with applicable self-regulatory requirements dealing with account transfers.

Unless otherwise indicated on E*TRADE Securities' account transfer form, I authorize E*TRADE Securities to liquidate any positions in nontransferable assets (including E*TRADE Funds), deduct any Debit Balance and transfer the resulting balance. I understand that after receiving a transfer request, E*TRADE Securities will cancel, or will instruct the delivering firm to cancel, all open orders for my account and to fulfill the transfer request as needed.

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5. E*TRADE SECURITIES BROKERAGE SERVICES

I ACKNOWLEDGE THAT I ALONE AM RESPONSIBLE FOR DETERMINING THE SUITABILITY OF MY INVESTMENT CHOICES IN LIGHT OF MY PARTICULAR CIRCUMSTANCES. I UNDERSTAND THAT E*TRADE SECURITIES ASSUMES NO RESPONSIBILITY FOR SUCH DETERMINATION. **As a self-directed investor, I assume full responsibility for each and every transaction in or for my Account and for my own investment strategies and decisions. I understand and agree that E*TRADE Securities and its affiliates will have no liability whatsoever for the results of my investment strategies, transactions and decisions.**

(a) No Advice

Unless otherwise specified in writing, E*TRADE Securities does not and will not provide me with any legal, tax, estate planning or accounting advice or advice regarding the suitability, profitability or appropriateness for me of any security, investment, financial product, investment strategy or other matter. Unless otherwise specified in writing, I acknowledge that E*TRADE Securities employees are not authorized to give any such advice, and I will neither solicit nor rely on any investment advice from any E*TRADE Securities employee. Unless otherwise specified, any information provided through the Service will not be used or considered by me as a recommendation that I buy, sell or hold a particular security or pursue any particular investment strategy. This information is not an offer, or a solicitation of an offer, to buy or sell securities on behalf of E*TRADE Securities. I also acknowledge that E*TRADE Securities neither assumes responsibility for nor guarantees the accuracy, currency, completeness or usefulness of information, commentary, recommendations, advice, investment ideas or other materials that may be accessed by me through the Service. This includes bulletin boards, message boards, chat services or other online conference or telecast by third party providers through E*TRADE Securities. If I choose to rely on such information, I do so solely at my own risk. I understand that the research, analysis, news or other information made available through the Service is not personalized or in any way tailored to reflect my personal financial circumstances or investment objectives and the securities and investment strategies discussed may not be suitable for me.

(b) Advisory Services and Trading Authorization

E*TRADE Securities may make information available to me about various investment advisers (Authorized agent(s)/Adviser(s)). I may contract with these Authorized agent(s)/Adviser(s) to manage my Account ("Advisory Account"). I may also contract with other Authorized agent(s)/Adviser(s) that I independently identify to manage my Advisory Account. E*TRADE Securities will have no responsibility or liability for any advice, recommendation or trading by such Authorized agent(s)/Adviser(s). I understand that E*TRADE Securities will maintain an Advisory Account for me and buy, sell or exchange securities or other products in accordance with instructions from me or my Authorized agent(s)/Adviser(s). I understand that this Agreement governs my Advisory Account and

| | | | | | | |
|----------|--|-------------|--------------------------|--------------------|----|--------|
| 12:29:44 | OptionsLink_0_21_MAIN_MENU | Recognition | {option} sell my shares | sell shares | 77 | Speech |
| 12:30:05 | OptionsLink_2_7_QUERY_TOTAL_STOCK_SHARES | Recognition | {option} sell all shares | sell all my shares | 51 | Speech |
| 12:30:19 | OptionsLink_2_17_FILL_REST_OF_ORDER | Recognition | {option} market_order | market order | 79 | Speech |
| 12:30:54 | OptionsLink_2_23B_DISPOSITION_NO_FD | Recognition | {option} check_by_mail | check by mail | 63 | Speech |
| 12:32:20 | OptionsLink_2_39_ANOTHER_TRADE | Recognition | {option} no | no | 79 | Speech |

Order Detail/Update

Customer: DAVID DE GROOT
INDIVIDUAL;Cash; Option Level 0

Account Number:62864995

APPLE INC COM(AAPL)

As of: January 24, 2013 12:30 PM EST | Real-time prices

| | | | |
|-------------|---------------|------------|------------|
| Last | Change | Bid | Ask |
| 460.05 | -53.96 | 460.01 | 460.10 |

Order Details

| | | | | | | |
|-----------------|---------------|-------------------|-----------------|--------------|-------------|------------|
| Trade ID | Symbol | Order Type | Quantity | Price | Term | AON |
| 22454496 | AAPL | Sell ESPP | 119.0 | MARKET | DAY | No |

| | |
|----------------------|------------------------|
| Created By: | OPTLINKIVR |
| Status: | SE |
| Trade Date: | 09/07/2012 12:30:57 PM |
| Exercised Shares: | 0.0 |
| Execution: | 680.143 |
| Exercise Market Val: | |
| Commission Type: | STANDARD |
| Commission: | 9.95 |
| SEC Fee: | 1.82 |
| Broker Assist Fee: | 0.0 |
| Spec Hand: | 0.0 |
| Postage & Hand: | 10.0 |
| Company: | 0.0 |
| Tax: | 0.0 |
| Net to Employee: | 80915.25 |
| Disposition: | CHECK |

| | |
|---------------------|------------------------|
| Created Date: | 09/07/2012 12:30:56 PM |
| Trade Send: | 09/07/2012 12:30:56 PM |
| Trade Accepted: | 09/07/2012 12:30:56 PM |
| Received Execution: | 09/07/2012 12:30:57 PM |
| Sent to Company: | |
| Tax Info Recv: | 1 |
| Shares Delivered: | 0.0 |
| Sent Settle: | 09/10/2012 03:32:00 AM |
| Settlement Date: | 09/12/2012 12:30:57 PM |
| Last Trade Date: | |

| | |
|------------------|------------------------|
| Beta Order #: | MO 4496 |
| Parent Trade ID: | 0 |
| Child Trade ID: | 0 |
| Updated Date: | 09/12/2012 03:32:14 AM |
| Updated By: | OPTLINKSETT |
| Change ID: | 0 |
| Cancel ID: | 0 |
| Cancel Source: | |
| Cancel Sent: | |
| Cancel Attempt: | |
| Cancel Rejected: | |
| Recv Canc Exec: | |

| | |
|-----------------------------|------|
| SARs Total Gain: | 0.0 |
| SARs Due Company: | 0.00 |
| SARs Tax Shares: | 0.0 |
| SARs Shares to Keep: | 0.0 |
| SARs Exercise Due Employee: | 0.00 |
| SARs Total Due Employee: | 0.00 |
| SARs Exer FMV Calc Type: | |
| SARs Rounding Method: | |

| Plan Details | | | | | | | | | |
|----------------|-------------|------------|-------------|-----------|------------|------------|------------|-------|--|
| Tech Short ID | Plan Number | Plan Date | Vest Period | CB Detail | Plan Price | Sell Share | Exer Share | Tax | |
| | 1990 | 12/26/2008 | 0 | 0.0 | 72.9385 | 35.0 | 0.0 | 0.0 | |
| | 1990 | 06/26/2009 | 0 | 0.0 | 73.6185 | 32.0 | 0.0 | 0.0 | |
| | 1990 | 12/25/2009 | 0 | 0.0 | 120.6745 | 1.0 | 0.0 | 0.0 | |
| | 1990 | 07/31/2012 | 0 | 0.0 | 387.7615 | 7.0 | 0.0 | 0.0 | |
| | 1990 | 01/31/2011 | 0 | 0.0 | 222.5725 | 12.0 | 0.0 | 0.0 | |
| | 1990 | 07/29/2011 | 0 | 0.0 | 293.2755 | 8.0 | 0.0 | 0.0 | |
| | 1990 | 01/31/2012 | 0 | 0.0 | 337.2375 | 8.0 | 0.0 | 0.0 | |
| | 1990 | 07/30/2010 | 0 | 0.0 | 179.8685 | 16.0 | 0.0 | 0.0 | |
| Total : | | | | | | | | 119.0 | |

Fill Details

| | | | |
|--|----------------------|-------------------|-------------------|
| VSP ID | Exec Date | Exec Price | No. Shares |
| CSGZ58HG00JgpwU807 | 07-SEP-2012 12:30:57 | 680.143 | 119.0 |
| Weighted Avg : 680.14 Total Shares : 119.00 | | | |