

IN THE FINANCIAL INDUSTRY REGULATORY AUTHORITY

FINRA CASE NO. 13-00119

In Matter of Arbitration Between)
DAVID DE GROOT,)
Claimant,)
v.)
)
E*TRADE SECURITIES, LLC,)
Respondent.)

BRIEF OF CLAIMANT

David de Groot respectfully submits this brief in support of his claim that E*TRADE negligently executed a sale of all 119 shares of his Apple Stock (AAPL) after he had given clear instructions to its Interactive Voice Response (IVR) system to sell only five (5) shares of this stock.

CHOICE OF LAW AND RULES OF EVIDENCE

E*TRADE's activities are governed by the Securities and Exchange Act of 1934, 15 U.S.C. 78a et seq., regulations enacted pursuant thereto, applicable FINRA rules, and state law. The central claim in this case is negligence, which is traditionally a state-law based cause of action.

E*TRADE's Brokerage Agreement states that the "Agreement will be deemed to have been made in the State of New York and will be construed, and the rights and liabilities of the parties determined, in accordance with the internal laws of the State of New York." (E*TRADE Brokerage Agreement, §

12(m))¹. Therefore, pursuant to the Agreement, the resolution of this matter should be determined based on the New York statutory and common law of negligence.

With respect to evidence to be admitted at the hearing, FINRA Rule 12604 states that “[t]he panel is not required to follow state or federal rules of evidence.” Page 47 of the most recent FINRA Arbitrator’s Guide contains guidance on the standard to apply regarding admission of evidence:

The rules of evidence applied in a court of law are not usually used in arbitration because arbitration is less formal than judicial proceedings, and allows for more liberal introduction of evidence than would be permitted in court. This does not mean that the arbitrators should accept everything presented to them. In fact, the opposing party will probably object to at least some of the evidence introduced. The evidence should relate to the case. The parties should be given an opportunity to object or comment on anything that is presented to the panel. The key consideration is fairness.²

In accordance with this guidance, strict rules of evidence need not be applied at the hearing.

**E*TRADE NEGLIGENTLY EXECUTED MR. DE GROOT’S
ORDER TO SELL FIVE SHARES OF APPLE STOCK**

Regardless of the jurisdiction, in order to establish negligence, a plaintiff must show that he was owed a duty by the defendant, that the defendant breached that duty, and that the breach caused the plaintiff’s injury. See Baptiste v. New York City Transit Authority, 28 A.D.3d 385, 386 (N.Y. App. Div., 2006). With a self-directed account, such as the one Mr. de

¹ <https://us.etrade.com/e/t/prospectestation/help?id=1209031000> (last visited August 13, 2013).

² <http://www.finra.org/web/groups/arbitrationmediation/@arbmed/@arbtors/documents/arbmed/p009424.pdf> (last visited August 13, 2013)

Groot maintains at E*TRADE, “the scope of any duties owed by the broker will generally be confined to executing the investor’s order.” Martinez Tapia v. Chase Manhattan Bank, N.A., 149 F.3d 404, 412 (5th Cir. 1998). This limited duty to execute Mr. de Groot’s order was breached by E*TRADE when it negligently sold all 119 shares of Apple stock in his account instead of the five shares he instructed the company to sell. E*TRADE made this negligent error because its IVR system misinterpreted the words “sell five shares” as “sell my shares.” E*TRADE’s negligence was further compounded by its failure to either record the call, or to establish and maintain a sufficiently detailed log of the communication to show what actually took place during the call.

**E*TRADE CAN BE FOUND LIABLE FOR NEGLIGENCE
EVEN IN THE ABSENCE OF A VIOLATION OF ANY
STATUTE, RULE, OR INDUSTRY PRACTICE**

A party does not need to have failed to follow a legal requirement for it to be found liable for negligence. Indeed, negligent conduct can occur in the absence of any violation of law or industry custom. This principle of negligence law was famously articulated in the case of The T.J.Hooper, 60 F.2d 737 (2d Cir., 1932), where a tugboat owner was sued in relation to the loss of two barges in a gale off the New Jersey coast. The issue in Hooper was whether the tugboat company could be found negligent for not having a radio on board by which they could have seasonably received warnings of the impending bad weather, even though there was no legal requirement to carry

a radio on board, and where it was not even customary in the industry to do so. Answering in the affirmative, Judge Learned Hand wrote that “a whole calling may have unduly lagged in the adoption of new and available devices,” and that “there are precautions so imperative that even their universal disregard will not excuse their omission.” Hooper at 740. Other cases have reiterated and confirmed this basic concept. For example, in a case involving a hospital’s alleged negligence in failing to test blood for HIV, the court stated that even “if the entire industry itself was slow to recognize changes and adopt appropriate precautions, such failure cannot inure to its benefit.” Gilmore v. Memorial Sloan Kettering Cancer Center, 607 N.Y.S.2d 546, 550 (1993). In another case, Hoemke v. New York Blood Center et al., 912 F.2d 550, 552 (2d Cir. 1990), the court held that “if a given industry lags behind in adopting procedures that reasonable prudence would dictate be instituted, then we are free to hold a given defendant to a higher standard of care than that adopted by the industry.”

Despite the fact that E*TRADE was not required by law to record Mr. de Groot’s call to its IVR system³, “reasonable prudence would dictate” that it should have recorded the call. By failing to do so, it robbed Mr. de Groot of the ability to prove that he clearly and correctly instructed the computer to sell five shares and not all of his shares, as claimed by E*TRADE.

³ FINRA Rule 3010(b)(2), known informally as the “Taping Rule,” requires organizations which have been disciplined or which employ a certain number of registered persons who have previously worked for such organizations, to record all calls. E*TRADE is not such an organization.

Computer programs are not infallible; indeed, computer system “bugs” are common and well documented. But, a computer cannot be deposed or cross-examined. E*TRADE maintains that Mr. de Groot told its system to sell all of his shares of Apple stock because its system says that’s what he said. More must be required.

The assumption that E*TRADE would have created an audio record of calls involving conversations with its IVR system, where many thousands of dollars are potentially at stake with every call, is so natural that even E*TRADE’s own Compliance Department expected to be able to consult such a record to verify Mr. de Groot’s order. In an email to Patrick Velasquez dated November 7, 2012, Compliance Analyst Akearah E. Judge wrote “Would you happen to know how I can gain access to an IVR recording? *I need to review the recording* to confirm exactly how many shares the customer requested to sell.” (E*TRADE Document E*T000295) (emphasis added).

As Ms. Judge correctly recognized, she *did* need to consult the recording to reliably confirm what Mr. de Groot’s instruction was. But Mr. Velasquez responded that E*TRADE “does not record calls in the IVR as is done in customer service,” adding that “however, there is a record of what happens during a call. . . .” He was referring to a computerized call log that is created by the IVR system. This log, however, simply shows what the

computer recorded as having been the order, and certainly not “what happen[ed] during the call.”

E*TRADE HAS FAILED TO RETAIN THE COMPLETE LOG OF MR. DE GROOT’S CALL DESPITE ITS BEING PLACED ON NOTICE OF THIS DISPUTE AS EARLY AS SEPTEMBER 2012, AND THE LOG IT HAS PROVIDED FAILS TO SHOW THAT MR. DE GROOT WAS EVER ASKED TO CONFIRM HIS ORDER TO SELL STOCK.

In the absence of a recording of the call, E*TRADE relies on its computerized call log as proof that Mr. de Groot placed and confirmed an order to sell all shares of his Apple stock. This log suffers from two infirmities. First, the log of the call is incomplete. Second, the log does not show that Mr. de Groot ever confirmed the order at issue.

Incomplete Call Log

According to its internal documents (e.g., E*T000295), E*TRADE’s current policy is to retain call logs to its IVR system only for a period of sixty days. Notwithstanding that the company’s Compliance Department knew of the existence of this claim as early as mid-September 2012, even receiving notification of the Complaint from the Securities and Exchange Commission, (E*T000250), it failed to retain the log of the entire call.

Although Mr. de Groot does not contend that E*TRADE acted in bad faith when it failed to preserve the complete log of his call, its inaction, coming at a time when it was on notice of this dispute, nonetheless constitutes negligent spoliation on its part. A party can be sanctioned for spoliation of evidence “even if the evidence was destroyed before the spoliator became a party,

provided it was on notice that the evidence might be needed for future litigation.” DiDomenico v. C & S Aeromatik Supplies, Inc., 252 AD2d 41, 53 (1998). “Because the negligent loss or destruction of evidence can be just as fatal to the non-spoliator's case as that which is done willfully,” Squitieri v. City of New York, 248 AD2d 201, 202-203 (1998), “spoliation sanctions are not limited to instances where evidence is destroyed intentionally or in bad faith, and can also be imposed when the destruction or loss of evidence is merely negligent.” Id. As a result of this negligence, E*TRADE cannot even provide its own log of the complete call. Fortunately, however, and thanks to Mr. de Groot’s early insistence that this matter be looked into and corrected immediately, E*TRADE *did* end up preserving that portion of the call where it alleges he gave and confirmed the order to sell all of his shares.

No Order Confirmation

In its response to the Statement of Claim, E*TRADE states that Mr. de Groot “would have had to say ‘Yes’ or press the ‘1’ key on his telephone to confirm the order.” Answer at 3. Yet, this confirmation step is notably absent from E*TRADE’s log of the conversation. (E*T000300). And Mr. de Groot emphatically stated to E*TRADE’s Customer Service Department in a telephone call shortly after the erroneous trade was executed, that although he waited for a confirmation step, he heard none.⁴

⁴ E*TRADE has provided the recording of the call to Customer Service during which he made this assertion, which he will offer into evidence at the hearing.

E*TRADE could have easily included a confirmation step in its call log, just as it included the question “Another trade?” with the answer “no” in the log. The log E*TRADE has provided contains no support for its contention that Mr. de Groot was required (or even given an opportunity) to confirm the order, as it claims, and as he vehemently denies. The lack of specificity in its log should not be permitted to inure to its benefit.

**E*TRADE’S COST-SAVING DECISION NOT TO RECORD CALLS
SHOULD NOT NOW SHIELD IT FROM LIABILITY
FOR EXECUTING AN ERRONEOUS TRADE**

Had E*TRADE chosen to record its calls, there would be no need for this arbitration because it would have been clear as to what transpired during the call. Indeed, during pre-litigation communication with E*TRADE, Mr. de Groot, through counsel, suggested that E*TRADE listen to the recording to resolve the matter. It was only when E*TRADE responded to the Statement of Claim that Mr. de Groot learned for the first time that no recording of the call was ever made.⁵

E*TRADE admits in its Answer to the Statement of Claim that it chooses not to record calls to its IVR system for economic reasons, claiming that to record all such calls would be “cost prohibitive.” Answer at 4. There is no technical impediment to doing so. Moreover, E*TRADE is well aware of the benefits of recording conversations since it chooses to record its

⁵ E*TRADE stated in its letter of December 14, 2012 to counsel that it “maintains an electronic call log rather than voice recordings, of orders entered through the IVR.” (E*T000263). At that time, counsel understood “maintain” to mean “preserve” and mistakenly believed that such calls were being recorded, even if they were not subsequently “maintained” in the system.

customer service calls. It should not be permitted to benefit from its economic choice not to record calls to its IVR system.

This is not the first time that E*TRADE's money-saving choices have resulted in customer harm for which the company has been held liable. In Reddy v. E*TRADE, FINRA Arbitration Case Number 10-04395, attached hereto,⁶ the arbitrator found E*TRADE 75% responsible for negligent handling of the Claimant's account relating to the Claimant's purchasing of options, holding that "while 'smart alerts' regarding cancellation of options were e-mailed to Claimant, a 'hard' mailing or telephone communication to Claimant was required in order to truly inform Claimant of prospective cancellation problems." The arbitrator found that "this was not done because of [E*TRADE's] desire for internal cost savings and avoidance of increased costly paper complexity issues at [E*TRADE's] places of business." The Claimant was also found 25% responsible for his loss "because of his failure to proceed as a reasonable investor."

Unlike the partially prevailing Claimant in Reddy, Mr. de Groot has in no way contributed to his loss, which was due solely to E*TRADE's IVR system's failure to properly record his order, and E*TRADE's subsequent failure to correct its error because of its incomplete and negligent record keeping. Indeed, Mr. de Groot did everything within his power to alert

⁶ While FINRA awards have no precedential value in other cases, and arbitrators are not required to follow any findings set forth in prior explained decisions, FINRA Explained Arbitration Decisions, <<http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/notices/p118141.pdf>> fn.2 (last visited August 8, 2013), they can nonetheless be considered in analyzing the treatment of similar fact situations, and there is no prohibition from doing so.

E*TRADE to the error and to minimize any losses: He promptly notified E*TRADE, initially by secure e-mail, then by telephone, and finally by mail. He went in person to E*TRADE's office in San Francisco to deal with the problem. He wrote to the Securities and Exchange Commission to report the problem and to ask for their intervention. And, when E*TRADE reported that it would not reverse the trade, he gave the company back the undeposited check he had received and instructed it to repurchase the Apple stock to mitigate any losses, as required by E*TRADE's Customer Agreement. Statement of Claim, Ex. F.

Had E*TRADE simply chosen to record calls to the IVR system, Mr. de Groot would have been able to demonstrate that he never gave the order to sell all of his shares, and never confirmed such an order. But even if a recording had been made, E*TRADE showed its intention to frustrate Mr. de Groot's efforts to resolve the matter informally when it wrote Mr. de Groot on September 25, 2012 that "[r]ecorded telephone calls are proprietary records, and per Firm policy, audio copies and transcripts of recorded telephone conversations cannot be provided to customers." (E*T000249). This forced Mr. de Groot to incur the expense of hiring counsel and filing this arbitration.

REQUESTED RELIEF

As detailed in the Statement of Claim, Mr. de Groot seeks an adjustment of his account to reflect the sale he ordered and not the one that was erroneously executed by E*TRADE. Therefore, he seeks to have his

account reflect a sale of five (5) shares of Apple stock from his account on the applicable trade date. E*TRADE assures its customers that in the event of trading problems due to fraud, they will make the necessary adjustments to the customers' accounts, assuring customers that "[a]ny unauthorized trades will be reversed and positions will be reinstated."⁷ It should do the same for errors of its own making. Mr. de Groot, therefore requests the following:

- 1) Reversal of the erroneously executed sale transaction (and his subsequent cover) such that his Employee Stock Purchase Plan account will show 114 shares of Apple stock (the original 119 less 5 shares) on the date of the trade;
- 2) Payment of \$3,400.72 to Mr. DeGroot, which represents five (5) shares at \$680.143/share, the value at which the trade was executed;
- 3) Restoration of the \$121.24 in additional funds he paid out of his account to repurchase the Apple stock at market;
- 4) Provision of an IRS Form 1099 statement to him and to the IRS that will correctly indicate the sale of five (5) shares of Apple stock on September 7, 2012 and not the erroneous sale of 119 shares.
- 5) His costs incurred in the filing and prosecution of this arbitration;
- 6) Reasonable attorney fees incurred in resolving this claim.

⁷ E*TRADE Customer Protection Guarantee <https://us.etrade.com/e/t/jumppage/viewjumppage?PageName=cpg> (last visited August 13, 2013).

Adjustment of his account in this manner, accompanied by the requested payments, will provide the simplest and most appropriate solution since it will nullify the effects of this clearly erroneous trade. However, should it not legally be possible for E*TRADE to fulfill its assurances that "unauthorized trades will be reversed and positions will be reinstated," Mr. de Groot respectfully requests the arbitrator to retain jurisdiction of this matter, and order E*TRADE to pay for a tax accountant to determine what amount Mr. de Groot should be paid to compensate him for his losses as a result of E*TRADE's failure to follow his instructions, including any taxes, fees and other costs.

Respectfully submitted,

DAVID DE GROOT,
By his attorney,



Ross E. Mitchell (Cal. State Bar # 232348)
4 Allston Street
West Newton, Massachusetts 02465-2554
(617) 965-7010 – legal@rossemitchell.com

Dated: August 14, 2013

Copies to

Val D. Hornstein, Esq., Arbitrator
Meredith Felde Hoffman, Esq., Counsel for E*TRADE
Christina Rovira, FINRA Case Administrator

ADDENDUM



September 25, 2012

Mr. David de Groot
743 Polk Street
#455
San Francisco, CA 94109

Re: E*TRADE Securities Account XXXX-4995
Case Reference Number 09181204

Dear Mr. de Groot:

On behalf of E*TRADE Securities LLC ("E*TRADE" or "Firm"), this letter is in response to your correspondence to the U.S. Securities and Exchange Commission ("SEC") dated September 14, 2012, regarding the above-referenced account.

Firm records confirm that order number two to sell 119 shares of Apple Inc. ("AAPL") at market was entered through the Firm's Interactive Voice Response ("IVR") system at 12:30:56 PM ET on September 7, 2012. Order number two executed at \$680.143 per share at 12:30:57 PM ET on September 7, 2012.

It is noted that you notified Customer Service by Secure Message on September 9, 2012 that you requested the sale of five shares of AAPL, rather than 119 shares, and that order number two was erroneously executed. A Trade Inquiry was completed on September 10, 2012 and it was confirmed that the order was properly handled per your instructions.

You discussed the results of the Trade Inquiry with Mr. John Carter, Senior Financial Services Representative, on September 10, 2012 and a credit of \$9.95 was applied to the account in consideration for the commission assessed to order number two. You also discussed the handling of order number two with Mr. Jason Corda, San Francisco Branch Manager, on September 12, 2012. Mr. Corda escalated the matter to the Stock Plan department for further review. After researching the trade, it was again confirmed that order number two was properly executed.

Mr. Kevin Queen, Team Lead of Stock Plan Customer Service, was unable to reach you at the telephone number of record on September 13, 2012; however, you discussed the concerns referenced in your correspondence to the SEC with Mr. Corda on September 18, 2012. Mr. Corda informed you that the execution of order number two would not be reversed. Mr. Corda applied a credit of \$9.99 to the account in consideration for the commission assessed to order number three to buy 116 shares of AAPL at market.

>>>> Recorded telephone calls are proprietary records, and per Firm policy, audio copies and transcripts of recorded telephone <<<<
>>>> conversations cannot be provided to customers. <<<<

E*TRADE appreciates the opportunity to respond to your concerns.

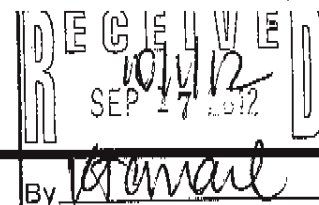
Sincerely,

Akearah E. Judge
Compliance Department
Compliance Analyst
E*TRADE Securities LLC

cc: Ms. Cheryl Lawson, U.S. Securities and Exchange Commission
SEC File Number SFRO-00248633
E*TRADE Securities LLC
Harborside Financial Center
501 Plaza 2, 5th Floor
Jersey City, NJ 07311
etrade.com

AJ

62864995

**Compliance**

From: "Help" <help@sec.gov> <help@sec.gov>
Sent: Monday, September 17, 2012 5:00 PM
To: Compliance
Subject: Investor Complaint - File SFRO-00248633/David de Groot [ref:_00D30JxQy_ 500a0OgFmt:ref]

Dear Compliance Officer:

We have received the enclosed complaint from one of your firm's clients. Please analyze the complaint carefully and prepare a written response addressing all of the issues raised in the complaint. Your response should describe clearly the actions you are taking in response to the complaint. If appropriate, please provide documentation supporting your findings.

Please send your response to the client, with a copy to our office, within 14 days of the receipt of this letter. If you cannot meet this deadline, please let me know.

You can access an electronic copy of SEC Form 1661 by clicking on: www.sec.gov/about/forms/sec1661.pdf, or, if that doesn't work, by cutting and pasting the URL.

If you have any questions, please contact me.

Sincerely,

Cheryl Lawson
Office of Investor Education and Advocacy
U.S. Securities and Exchange Commission
44 Montgomery Street, Ste. 2800
San Francisco, CA 94104
(415) 705-2479

415-705-2830

Correspondent Name: Mr. David de Groot
Create Date: 9/14/2012
Origin: Email
File #: SFRO:~00248633~:SFRO

Send to Entity:

Investor Information
Name:

Address:

Day Phone:
Alt Phone:
Fax:
Email:

Entity Information
Name:
Type:
Representative:
Address:



December 14, 2012

Mr. Ross E. Mitchell
4 Allston Street
West Newton, MA 02465

Re: Case Reference Number 10241205 (09181204 & 0241205)

Dear Mr. Mitchell:

On behalf of E*TRADE Securities LLC ("E*TRADE" or "Firm"), this letter is in response to your November 25, 2012 letter, wherein you request information about the account of E*TRADE customer Mr. David DeGroot.

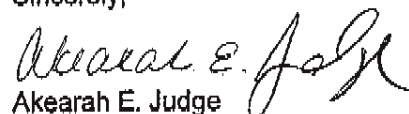
Provided below is the call log that documents Mr. Degroot's instructions to sell "all" of his Apple Inc. ("AAPL") Employee Stock Plan Program ("ESPP") shares at market on September 7, 2012.

12:28:44	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	70	Speech
12:30:54	OptionsLink_2_25B_DISPOSITION_NO_FD	Recognition	{option} check by mail	check by mail	63	Speech
12:32:30	OptionsLink_2_36_ANOTHER_TRADE	Recognition	{option} no	no	79	Speech

As previously communicated, Mr. DeGroot's order to sell 119 shares of Apple Inc. ("AAPL") at market was entered through the Firm's Interactive Voice Response ("IVR") system. E*TRADE maintains an electronic call log, rather than voice recordings, of orders entered through the IVR.

The information provided above should be responsive to your request, and therefore, E*TRADE has respectfully closed its file on this matter.

Sincerely,


Akearah E. Judge
Compliance Analyst
Compliance Department
E*TRADE Securities LLC

E*TRADE Securities LLC
Harborside Financial Center
501 Plaza 2, 5th Floor
Jersey City, NJ 07311
etrade.com

From: Velazquez, Patrick
Sent: Wednesday, November 07, 2012 11:04 AM
To: Judge, Akearah
Subject: RE: David De Groot 62864995
Attachments: RE: David De Groot / Apple Trade / IVR

Hello,

We don't record calls in the IVR as is done in customer service; however, there is a record of what happens during a call. Additionally, the call logs are only available on the existing system for up to 60 days. Keep in mind in the long term that when we move the IVR to a new vendor, these records may only be available for up to 30 days.

Fortunately, the Product Feedback team asked me about this same customer back in September. I've attached that email where it indicates what this customer did for this order. It indicates the customer said "sell all my shares" and ultimately acknowledged it when the order was placed. Let me know if you have any other questions.

Thanks,

Pat

From: Judge, Akearah
Sent: Wednesday, November 07, 2012 1:54 PM
To: Velazquez, Patrick
Subject: David De Groot 62864995

Hello,

Would you happen to know how I can gain access to an IVR recording? On September 7, 2012, 119 of the customer's AAPL ESPP shares were sold via the IVR. The customer sent in a complaint stating that he only requested to sell 5 shares. I need to review the recording to confirm exactly how many shares the customer requested to sell. Thanks

Akearah E Judge
Compliance Analyst
akearah.judge@etrade.com
201-499-6268

From: Velazquez, Patrick
Sent: Monday, September 17, 2012 7:28 AM
To: Schienle, Robert
Subject: RE: David De Groot / Apple Trade / IVR

Rob,

I looked at the call logs and it indicates Mr. De Groot said “sell all my shares” for how many ESPP shares to sell (total of 119) and to be sold at the market. Once he requested the proceeds to be sent by check, the order was placed. We don’t record IVR calls, so all we have is the call records. Let me know if this helps.

12:29:44	OptionsLink_0_21_MAIN_MENU	Recognition	[opt
12:30:05	OptionsLink_2_7_QUERY_TOTAL_STOCK_SHARES	Recognition	[opt
12:30:19	OptionsLink_2_17_FILL_REST_OF_ORDER	Recognition	[opt
12:30:54	OptionsLink_2_23B_DISPOSITION_NO_FD	Recognition	[opt
12:32:30	OptionsLink_2_36_ANOTHER_TRADE	Recognition	[opt

Thanks,

Pat

From: Schienle, Robert
Sent: Friday, September 14, 2012 5:15 PM
To: Velazquez, Patrick
Subject: RE: David De Groot / Apple Trade / IVR

Just checked to be sure – we are good to do this on Monday. Have a good weekend. – Rob

From: Velazquez, Patrick
Sent: Friday, September 14, 2012 5:11 PM
To: Schienle, Robert
Subject: RE: David De Groot / Apple Trade / IVR

No problem getting the details, but how time sensitive is this? I’m about to head out the door.

From: Schienle, Robert
Sent: Friday, September 14, 2012 5:09 PM
To: Velazquez, Patrick
Subject: David De Groot / Apple Trade / IVR

Good afternoon Pat – are you able to pull logs on IVR access with the details listed below?

From: Queen, Kevin
Sent: Friday, September 14, 2012 4:49 PM

To: Squibbs, Ryan
Cc: Schienle, Robert; Lonergan, Patrick
Subject: RE: David De Groot / Apple Trade

Account 62864995
Order # 22454496
Date 9/7/2012
Time 12:30:57 is when the order was entered.

Please.

From: Queen, Kevin
Sent: Friday, September 14, 2012 4:31 PM
To: Squibbs, Ryan
Cc: Schienle, Robert; Lonergan, Patrick
Subject: RE: David De Groot / Apple Trade

If we can pull the recording just to confirm what the client entered and said that would be great. Guy works for AAPL and we want to try to avoid an employee making a big stink with the company unless we can prove that the order entered was what he was saying and typing in the system. I'm just trying to have my ducks in a row before I tell the guy he's SOL. Thanks.

From: Squibbs, Ryan
Sent: Friday, September 14, 2012 4:07 PM
To: Queen, Kevin
Cc: Schienle, Robert; Lonergan, Patrick
Subject: RE: David De Groot / Apple Trade

Kevin,

I just spoke with Rob and he said we could pull the keys the customer was punching and possible even what the customer was saying to the IVR. If needed, respond with all the order details of what you wanted pulled and we'll go from there.

From: Queen, Kevin
Sent: Friday, September 14, 2012 3:27 PM
To: Squibbs, Ryan
Subject: RE: David De Groot / Apple Trade

Is there a recording of this IVR call? The client wants to listen to it which I figure we wouldn't do unless it went to like a litigation type situation.

From: Squibbs, Ryan
Sent: Thursday, September 13, 2012 11:44 AM
To: Queen, Kevin; Lonergan, Patrick
Cc: Boyd, Sean; Harkleroad, Jon
Subject: RE: David De Groot / Apple Trade

Sorry for the delay. Yes, the order history is exactly what is confirmed through IVR. No real need to contact Pat V.

Ryan Squibbs
Team Lead
Risk Trading Team
E*TRADE Securities LLC
Alpharetta, GA
Phone: 678-319-7400 x2239526
Fax: 866-650-0003

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Team Leads are registered with E*TRADE Securities LLC, Member FINRA/SIPC.

From: Queen, Kevin
Sent: Wednesday, September 12, 2012 3:55 PM
To: Lonergan, Patrick; Squibbs, Ryan
Cc: Boyd, Sean; Harkleroad, Jon
Subject: FW: David De Groot / Apple Trade

Pat/Ryan,

Is it possible to determine via IVR records the share quantity of the order the client entered? Is this something Pat Velazquez would assist with?

Order #22454496

Thanks.

From: Boyd, Sean
Sent: Wednesday, September 12, 2012 3:49 PM
To: Queen, Kevin
Cc: Harkleroad, Jon
Subject: FW: David De Groot / Apple Trade

Kevin –

The below participant placed a trade via the IVR and is stating that the system sold **too** many shares.

Can you please check with Patrick Lonergans group to see if they can pull any data from Tech to validate how many shares the client originally specified?

Basically, what data does the TI team pull when a TI is submitted for a trade that occurred via IVR?

Thanks,

Sean

From: Corda, Jason
Sent: Wednesday, September 12, 2012 3:20 PM
To: Harkleroad, Jon
Subject: David De Groot / Apple Trade

Hey Jon

Re: 62864995

Thanks for your help with this situation. I let him know Kevin would give him a call by Monday, to see what additional details we had. I explained all of his options, but he is set on the fact he wants the trade reversed.

Just let me know if I can do anything else to help.

Thanks

Jason Corda, CRPC®
Branch Manager I San Francisco Branch
E*TRADE Securities, LLC
E*TRADE Capital Management, LLC
532 Market St. San Francisco, CA 94104
Ph 415-967-7679 I Fax 415-445-9972 I

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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
12:32:30	OptionsLink_2_36_ANOTHER_TRADE	Recognition	[option] no	no	79	Speech

**Award
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimant
Peter P. Reddy, Sr.

Case Number: 10-04395

vs.

Respondent
E*Trade Securities LLC

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member

REPRESENTATION OF PARTIES

For Claimant Peter P. Reddy, Sr.: Esther Kim, Esq., San Jose, California.

For Respondent E*Trade Securities LLC: Meredith Felde, Esq., E*Trade Securities LLC, Roseville, California.

CASE INFORMATION

Statement of Claim filed on or about: September 23, 2010.

Peter P. Reddy, Sr. signed the Submission Agreement: September 22, 2010.

Statement of Answer filed by E*Trade Securities LLC on or about: November 24, 2010.

E*Trade Securities LLC signed the Submission Agreement: November 24, 2010.

CASE SUMMARY

Claimant asserted a cause of action for negligence in the handling of his account. The causes of action relate to Claimant's purchase of options in Inverness Medical ("Inverness").

Unless specifically admitted in its Answer, Respondent 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 the amount of \$22,059.19;
2. Interest in the amount of 10% on the principal balance, equaling \$2,205.91, for a total claim of \$24,260.11 (actual amount should be calculated as \$24,265.10);

3. Reasonable attorneys' fees and costs incurred; and
4. Any further relief as the Arbitrator deems just and appropriate.

In its Answer, Respondent requested:

1. That the Arbitrator deny all claims in the Statement of Claim;
2. Reasonable attorneys' fees and costs; and
3. Any other relief as the Arbitrator may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

The parties have agreed that a handwritten, signed Award may be entered.

AWARD

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

1. The Arbitrator has decided that Respondent was responsible for 75% of the damage of \$24,265.10 in this matter.

The Arbitrator has also decided that Claimant was himself responsible for 25% of the damage in this matter which is to be netted against Respondent's 75%. Accordingly, the actual damage amount of \$24,265.10 is divided in responsibility of 75% attributable to Respondent and 25% to Claimant for a net to Claimant of 50% of the lost profit of \$24,265.10.

The reasons the Arbitrator has assigned responsibility of 75% of the lost profit of \$24,265.10 to Respondent is the Arbitrator's finding that, while "smart alerts" regarding cancellation of options were e-mailed to Claimant, a "hard" mailing or telephone communication to Claimant was required in order to truly inform Claimant of prospective cancellation problems. The Arbitrator finds this was not done because of Respondent's desire for internal cost savings and avoidance of increased costly paper complexity issues at Respondent's places of business. The Arbitrator also feels that that Respondent had a duty to give Claimant much more clear and concise instructions (than they did) on how to exercise his options.

Additionally, Claimant, himself, was not blameless and was, in the Arbitrator's opinion, responsible for 25% of his loss of option profit because of his failure to proceed as a reasonable investor. The Claimant began reasonably enough by depositing wire-transferred funds with Respondent which he then mistakenly assumed was also the exercise of his stock options. Thereafter, he proceeded unreasonably by ignoring the contents of Respondent's Exhibits A, B, C, and D which were "hard" mailed to him. Consequently, the \$22,059.19 and the interest of \$2,205.91 amounted to lost profit totaling \$24,265.10.

Responsibility for the loss should be assigned 25% to Claimant and 75% to Respondent and Respondent must pay Claimant the net of 50% of the total loss of profit and interest of \$24,265.10 –or the sum of \$12,132.55

Respondent is liable for and shall pay to Claimant the sum of \$12,132.55 in compensatory damages, inclusive of interest in the amount of \$1,102.97. The sum of \$1,102.97 represents one year of interest at 10% per annum which the Arbitrator has decided is appropriate. This one year period ran from February 2009 (when the funds were wired and the options were presumed exercised to February 2010 (when the options actually expired).

2. The parties shall bear their own attorneys' fees.
3. Any and all relief not specifically addressed herein is denied.
4. The Arbitrator has provided an explanation of his decision in this Award. This 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 = \$ 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 that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, E*Trade Securities LLC is assessed the following:

Member surcharge = \$ 425.00

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, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00
Pre-hearing conference: July 14, 2011 1 session

Two (2) Hearing sessions @ \$450.00/session = \$ 900.00
Hearing Date: December 8, 2011 2 sessions

Total Hearing Session Fees = **\$1,350.00**

- 1. The Arbitrator has assessed \$675.00 of the hearing session fees to Claimant.**
- 2. The Arbitrator has assessed \$675.00 of the hearing session fees to Respondent.**

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

FIRRA Dispute Resolution
Arbitration No. 10-04325
award page 5 of 5

ARBITRATOR

John Patrick Kelly

Sole Public Arbitrator

Arbitrator's Signature

John Patrick Kelly

John Patrick Kelly
Sole Public Arbitrator

Jan. 12, 2012

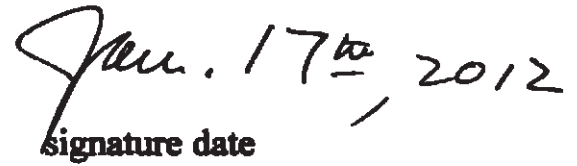
Signature Date

February 3, 2012

Date of Service (FOR FIRRA Dispute Resolution
Office use only)

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein who executed this instrument which is my award.


John Patrick Kelly


signature date