

**Modified Award  
FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

Rohit Saroop  
Preya Saroop  
George Sofis

Case Number: 15-03035

vs.

Respondent

Interactive Brokers LLC

Hearing Site: Richmond, Virginia

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Nature of the Dispute: Customers vs. Member

This case was decided by an all-public panel.

**REPRESENTATION OF PARTIES**

For Claimants Rohit Saroop, Preya Saroop, and George Sofis: David Miller, Esq., Shepherd, Smith, Edwards & Kantas LLP, Houston, Texas.

For Respondent Interactive Brokers LLC: David Luger Esq., David Luger Esq., and Hannah O. Koesterer, Esq., Katten Muchin Rosenman, LLP, Chicago, IL. Previously represented by Cameron Stout, Esq., Wiand Guerra King P.A., Palo Alto, California.

**CASE INFORMATION**

Statement of Claim filed on or about: November 10, 2015.

Preya Saroop signed the Submission Agreement: November 6, 2015.

Rohit Saroop signed the Submission Agreement: November 6, 2015.

George Sofis signed the Submission Agreement: November 6, 2015.

Statement of Answer and Counterclaim filed by Respondent on or about: January 4, 2016.

Respondent signed the Submission Agreement: January 4, 2016.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of contract and promissory estoppel, violation of state securities statutes, declaratory judgment, commercially unreasonable disposition of collateral, vicarious liability, and common law fraud. The causes of action relate to unspecified securities.

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

In its Counterclaim, Respondent asserted the following causes of action: failure to mitigate and pay a debt.

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested compensatory damages between \$1,000,000.00 and \$3,000,000.00, direct or consequential damages, market adjusted damages and/or punitive damages, interest, lost opportunity damages, rescission, statutory damages, costs, legal fees, and any and all other relief available

At the close of the hearing, Claimants requested compensatory damages in the amount of \$427,556.10 for losses accrued on the account and/or, \$1,276,049.90 for losses accrued since ETNs trades using a portfolio margin, and/or \$1,660,282.70 for the highest intermediate value of the account.

In its Answer and Counterclaim, Respondent requested dismissal of the Statement of Claim, compensatory damages in the amount of \$220,172.09 from Claimants Rohit and Preya Saroop, compensatory damages in the amount of \$166,087.53 owed by Claimant Dr. Sofis, interest, costs, and attorneys' fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

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

At the close of the hearings, Claimants dropped their claim for allowing a non-registered broker to make trades.

On or about February 8, 2017, Respondent filed a Motion to Vacate the Award in the underlying matter. On or about March 6, 2017, Claimants filed an Opposition and Motion to Confirm the Award. Respondent filed a Motion for Summary Judgment dated April 3, 2017. Claimants filed their Reply in Support of Motion to Confirm and Reply in Opposition to the Motion for Summary Judgment dated April 19, 2017. By Order dated September 1, 2017, the Court ordered the matter be remanded back to the Panel for clarification of the damages awarded. After due consideration, the Panel submits this Modified Award.

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.

## **ARBITRATOR'S REPORT**

The Claimants are awarded the value of their accounts on August 19, 2015 (\$520,450.40 to the Saroops and \$500,529.48 to Sofis). Respondent's Counterclaim was dismissed based on Respondent's violation of FINRA Rule 4210 as further explained in FINRA Regulatory Notice 08-09. The securities placed in the portfolio margin account were not eligible for that account based on these rules and regulations. Respondent's position that the Panel should not enforce a FINRA rule amounts to saying that FINRA should provide an opportunity for investors to commit financial suicide by investing in securities that are ineligible for inclusion in a portfolio margin account. To ignore a FINRA rule by the Panel would defeat the purpose of FINRA.

## **AWARD**

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

1. Respondent is liable for and shall pay to Claimants Rohit and Preya Saroop compensatory damages in the amount of \$520,450.40 plus interest at the rate of 8% per annum from 30 days of the date of the award until payment.
2. Respondent is liable for and shall pay to Claimants Rohit and Preya Saroop attorneys' fees representing 40% of the compensatory damages and 30% of the net claimed by Respondent for a total of \$274,006.16. The Panel granted attorneys' fees pursuant to the parties' agreement.
3. Respondent is liable for and shall pay to Claimant George Sofis compensatory damages in the amount of \$500,529.48 plus interest at the rate of 8% per annum from 30 days of the date of the award until payment.
4. Respondent is liable for and shall pay to Claimant George Sofis attorneys' fees representing 40% of the compensatory damages and 30% of the net claimed by Respondent for a total of \$249,858.49. The Panel granted attorneys' fees pursuant to the parties' agreement.
5. There was no evidence of profits or losses in securities ineligible for portfolio management accounts from the time that the parties signed the portfolio management agreements and the parties' accounts' net asset values, all cash on August 19, 2015. Therefore, the panel could not consider what happened prior to the investment of cash on August 19, 2015 in the portfolio management accounts.

The damages set forth above stem from the amounts, all cash, on August 19, 2015, which were subsequently invested in securities that were ineligible for investment in portfolio margin accounts. Values were determined from Claimants' Exhibits 70 and 71 and Respondent's Exhibits R-48 and R115.

Counsel fees were based on an agreement between the attorneys for both parties. There was a dispute as to whether the agreement was cancelled. The Panel found for the Claimants. The amounts were based on a written fee agreement between the counsel and each party. Percentages and fees were obtained from Claimants' Exhibits 53 and 63 and Respondent's Exhibit R-49.

6. Claimants' claim for witness fees is denied.
7. Respondent is liable for and shall pay to Claimants \$600.00 as reimbursement of the non-refundable portion of the filing fee previously paid.
8. Respondent's Counterclaims are denied in their entirety.
9. Respondent's request for attorneys' fees is denied.
10. Any and all claims for relief not specifically addressed herein, including punitive damages, are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 2,000.00
Counterclaim Filing Fee	= \$ 2,125.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

*As stated in the Award section above, Respondent is liable for and shall pay Claimants \$600.00 as reimbursement of the non-refundable portion of the filing fee previously paid.*

#### **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 event giving rise to the dispute. Accordingly, as a party, Interactive Brokers, LLC is assessed the following:

Member Surcharge	= \$ 3,025.00
Member Process Fee	= \$ 6,175.00

**Hearing Session Fees and Assessments**

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, 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: October 5, 2016	1 session	
One (1) pre-hearing session with the Panel @ \$1,400.00/session	= \$	1,400.00
Pre-hearing conference: March 28, 2016	1 session	
Nine (9) hearing sessions @ \$ 1,400/session	= \$	12,600.00
Hearing Dates:		
December 5, 2016	2 sessions	
December 6, 2016	2 sessions	
December 7, 2016	2 sessions	
December 8, 2016	2 sessions	
December 9, 2016	1 session	
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Total Hearing Session Fees	= \$	14,450.00

The Panel has assessed the \$14,450.00 hearing session fees to Respondent.


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

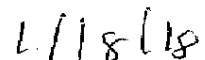
**ARBITRATION PANEL**

Edward Blumstein	-	Public Arbitrator, Presiding Chairperson
Carol A. Schuyler	-	Public Arbitrator
Simon Jonathan Lawrence	-	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.

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Edward Blumstein  
Public Arbitrator, Presiding Chairperson

  
\_\_\_\_\_  
Signature Date

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Carol A. Schuyler  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Simon Jonathan Lawrence  
Public Arbitrator

\_\_\_\_\_  
Signature Date

**January 30, 2018**  
Date of Service (For FINRA Office of Dispute Resolution office use only)

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Public Arbitrator

*1/19/18*  
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Signature Date

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Simon Jonathan Lawrence  
Public Arbitrator

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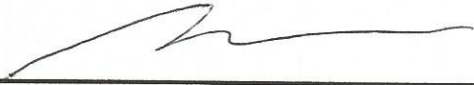
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Public Arbitrator

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Signature Date

1-24-18

**January 30, 2018**

Date of Service (For FINRA Office of Dispute Resolution office use only)