

## E-Trade Inactivity Fee Class Action Trimmed

By **Daniel Wilson**

*Law360, New York (March 28, 2012, 5:24 PM ET)* -- A California federal judge on Tuesday ended individual plaintiffs' claims in a proposed class action accusing broker-dealer E-Trade Securities LLC of charging improper account inactivity fees without contractual authority, significantly narrowing the suit.

U.S. District Judge Edward M. Chen said that the plaintiffs, E-Trade customers Joseph Roling and Alexander Landvater, had known about the fees since 2003 and 2008, respectively. While they had shared their annoyance with E-Trade, Judge Chen said, they hadn't challenged the legal basis of the fees in their correspondence with the company, so their claims cannot go forward.

"While Mr. Roling expressed unhappiness with the amount of the fee assessment, he never alerted E-Trade to the fact that he was disputing its legal right to charge the fees in the first place," Judge Chen said.

Judge Chen said Landvater had also waived his right to contest the fees because he tacitly accepted the contract terms by complying after learning about the fees.

"[The plaintiffs] argue ... that [Landvater] cannot be said to have waived any right because, after he learned about the fees in 2008, he was not thereafter assessed any such fees," Judge Chen said. "This argument misses the point. After learning of the fees, Mr. Landvater was not subsequently charged any fees because he complied with E-Trade's rules and made the necessary trades to avoid being charged the fees."

Judge Chen also dismissed a deceptive conduct claim brought under New York's General Business Law Section 349, ruling the law doesn't cover securities transactions. The plaintiffs had claimed there was a split in New York precedent on whether the law covers securities transactions, an argument which Judge Chen found to be unpersuasive.

The ruling still allows the suit to continue. Judge Chen said that while both the plaintiffs' individual contract claims and the New York business law claim have been dismissed entirely, a new proposed class representative could still join the case.

"We are very pleased with the result and gratified that the court saw the merits of E-Trade's position," said Douglas P. Lobel, counsel for E-Trade.

The suit, originally brought in February 2010, alleges that E-Trade charged and collected quarterly

inactivity fees not permitted by its contract with customers, constituting a deceptive or misleading practice under the aforementioned New York business law.

The plaintiffs moved for class certification in February 2012. E-Trade concurrently renewed a motion for summary judgment, saying the plaintiffs had waived any contractual right to challenge the fee. The company also asked for the New York business law claim to be dismissed.

Counsel for the plaintiffs did not immediately respond to a request for comment Wednesday.

E-Trade is represented by Martin S. Schenker, Whitty Somvichian and Douglas P. Lobel of Cooley LLP.

The plaintiffs are represented by Sean P. Reis, Jay Edelson, Steven L. Woodrow, Rafey S. Balabanian, Ari J. Scharg and Benjamin S. Thomassen of Edelson McGuire LLC as well as by Michael J. Aschenbrener of Aschenbrener Law PC.

The case is Roling v. E-Trade Securities LLC, case number 3:10-cv-00488, in the U.S. District Court for the Northern District of California.

--Additional reporting by Christopher Norton. Editing by Shannon Henson and Eydie Cubarrubia.