

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT BLUEFIELD

BRIAN BLANKENSHIP,

Plaintiff,

v.

Civil Action No: 1:13-8048

T.D. AMERITRADE, INC.,

Defendant.

**MEMORANDUM OPINION AND ORDER**

By Standing Order, this action was referred to United States Magistrate Judge R. Clarke VanDervort for submission of findings and recommendations regarding disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). Magistrate Judge VanDervort submitted his Proposed Findings and Recommendation ("PF&R") to the court on January 28, 2014, in which he recommended that the district court grant in part and deny in part defendant's motion to dismiss, or in the alternative, motion to refer to arbitration (Doc. No. 3). Specifically, the magistrate judge recommended that defendant's motion to dismiss pursuant to Rule 12(b)(6) be denied and defendant's motion to dismiss and refer to arbitration be granted.

In accordance with the provisions of 28 U.S.C. § 636(b),

the parties were allotted fourteen days, plus three mailing days, in which to file any objections to Magistrate Judge VanDervort's PF&R. The failure of any party to file such objections constitutes a waiver of such party's right to a de novo review by this court. Snyder v. Ridenour, 889 F.2d 1363 (4th Cir. 1989).

The parties failed to file any objections to the Magistrate Judge's PF&R within the seventeen-day period. Having reviewed the PF&R filed by Magistrate Judge VanDervort, the court adopts the findings and recommendation contained therein.


Accordingly, the court adopts the factual and legal analysis contained within the PF&R, **GRANTS in part and DENIES in part** defendant's motion to dismiss, or in the alternative, motion to refer to arbitration (Doc. No. 3). Specifically, the court **DENIES** defendant's motion to dismiss pursuant to Rule 12(b)(6) and **GRANTS** defendant's motion to dismiss and refer to arbitration.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se, and counsel of record.

The Clerk is further directed to remove this case from the court's active docket.

It is **SO ORDERED** this 18th day of February, 2014.

**ENTER:**

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge