CITATION: Yu v. TD Direct Investing, 2025 ONSC 5069
COURT FILE NO.: DC-20-00000012-0000
DATE: 20250904

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:		)	
HAO YU	Applicant	)	Self-Represented
– and –		)	
TD DIRECT INVESTING	Respondent	)	Mathias Memmel, for the Respondent
		)	**HEARD:** July 29, 2025

MCCARTHY J.

The Appeal

[1] This is an appeal by Hao Yu ("the Appellant") from the judgment of Deputy Judge Paul Kupferstein ("the trial judge") of the Small Claims Court, dated March 16, 2020, in which the trial judge dismissed the Appellant's claim against both defendants.

Grounds of Appeal

[2] The Appellant's two principal grounds of appeal are best stated as:

a. That the trial judge displayed bias and discriminated against the Appellant as a self-represented litigant with English as her second language; and

b. That the trial judge ignored the Appellant's oral and documentary evidence and made errors of law and mixed law and fact.

Background to the Claim

[3] The Appellant was a customer of TD Direct Investing ("the Respondent"). On May 23, 2019, the Appellant placed a purchase order for 3400 shares of Ideaya Biosciences Inc. at $15.11 USD per share, through her US Registered Savings Plan. The Appellant's order

was placed over the Respondent's WebBroker Online Trade & Investing Platform ("WebBroker"). The purchase order was filled at $14 USD per share at 10:42am that day.

[4] At trial, the Appellant sought damages of $12,882.53 for the difference between the amount paid for the purchased shares and the value of the shares at the time when the money was deducted from her account, by which time the value of the stock had fallen. She claims not to have "acquired" the shares until the time her account was debited.

The Trial Judge's Decision

[5] The trial judge dismissed the claim against Bharat Masrani, finding both no cause of action and no allegation which would attract liability.

[6] The trial judge went on to find that the Appellant had not established any liability in tort or contract against the Respondent for the Appellant's losses from the share trade. The trial judge's conclusion was based upon the following fact-based findings:

a. Once the Appellant's order was filled, the stock became her property to trade or do with as she wished;

b. The Respondent was not liable to the Appellant for any inaccurate information on the WebBroker by virtue of s. 5 of the governing Electronic Brokerage Services Client Agreement (the "Agreement"), which stated, inter alia, that the Respondent would have:

> "[No] liability, contingent or otherwise, for the accuracy, completeness, timeliness or correct sequencing of the Information or for any decision made or action taken by you in reliance upon the Information or Services. [TD] will not be responsible for any loss, damage or personal injury suffered by any person by reason of any act or omission in the course of or in connection with the operation of any Access Device by you."

c. Once the Appellant learned from looking at her screen that her order had been filled, the shares she acquired were available for trading. Therefore, her alleged inability to access them could not be the Respondent's responsibility;

d. The Appellant was unfamiliar with how to access shares acquired from filled orders on the Respondent's WebBroker page; yet it was her responsibility to gain an understanding of how to operate the WebBroker platform;

e. The Appellant had an obligation to mitigate her loss, which she failed to do. She waited two hours, an exceptionally long time after the trade, to contact the Respondent's brokerage services; and

f. The Respondent had no responsibility to provide the Appellant with advice about any particular transaction and had no responsibility to conduct the trade; the Appellant was aware of this and freely assumed the risk.

Standard of Review

[7] The standard of review for reviewing a trial judge's findings of fact is that of palpable and overriding error. The Supreme Court of Canada has described it as a highly deferential standard: see *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 SCR 235, at paras. 10 and 25.

[8] The standard of review for reviewing findings of mixed law and fact is similarly that of palpable and overriding error. However, if the trial judge clearly makes some "extricable error in principle", such error may amount to an error in law for which the standard of review of correctness applies: *Housen* at paras. 8 and 37.

Discussion

[9] For the reasons which follow, I would dismiss the appeal.

Ground 1: No Bias and Discrimination

[10] The Appellant either declined to or neglected to file the transcript of the trial. Other than some general allegations of bias on the part of the trial judge, there is simply no reliable or persuasive evidence of bias sufficient to rebut the strong presumption of judicial impartiality. The onus is on the party claiming bias to demonstrate some cogent, substantial, and realistic evidence that she was the subject of bias or discrimination: *Cojocaru v. British Columbia Women's Hospital and Health Centre*, 2013 SCC 30, [2013] 2 S.C.R. 357, at para. 22. The court is left in the impossible position of having to take the Appellant at her word, without regard to the most crucial piece of evidence that exists in an apprehension of bias case: the transcript of proceedings.

[11] The Appellant merely states that she found the trial judge was not friendly, discriminated against her as a self-represented litigant with English as a second language, permitted the Respondent's counsel at trial to attack her humanity and her language ability, and took several "nano naps" while she was testifying.

[12] These are mere allegations which do not amount to cogent, substantial, and realistic evidence. They are insufficient to satisfy the twofold standard for reasonable apprehension of bias laid down by the Court of Appeal in *Marchand v. Public General Hospital Society of Chatham* (2000), 51 O.R. (3d) 97, at para. 131: i) the person considering the alleged bias must be reasonable and informed, and ii) the apprehension of bias must itself be reasonable.

[13] Not only is there no transcript on which to base any finding of bias or discrimination, there is nothing in the reasons of the trial judge which remotely hints at bias or discrimination.

[14] I find no reason to disturb the decision below based upon bias or reasonable apprehension of bias.

Ground 2: No Palpable or Overriding Error

[15] The evidence before the trial judge entitled him to make the findings that he did. He made no palpable or overriding error in doing so. The findings were entirely fact based. A high degree of deference is owed by this court.

[16] The evidence was straightforward. The Appellant had access to the shares and was free to trade them from the moment she acquired them. According to s. 5 of the Agreement, the Respondent was not liable for any inaccurate information. The Respondent had no responsibility to give advice or conduct a trade. The value of the shares purchased dropped after the Appellant ordered them. She had the capacity to trade them at any time but waited to do so. The failure of the Appellant to learn the operation of the Respondent's trading platform and specifically how to trade stock cannot be laid at the feet of the Respondent.

[17] I see no basis to disturb the findings made on the evidentiary record.

Summary and Disposition

[18] The trial judge made no palpable or overriding error in his treatment of the evidence or the conclusions he drew from it.

[19] The appeal is dismissed. Should the parties be unable to agree on costs of the appeal, that issue should be addressed in brief written submissions of no more than two pages and submitted to me through the Trial Coordinator at Newmarket according to the following timetable: Respondent's submissions to be served and filed by September 30, 2025; Appellant's submissions to be served and filed by October 14, 2025; Respondent's reply submissions, if any by October 21, 2025.

MCCARTHY J.

Released: September 4, 2025