

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Tillson Family Trust, Claimant v. T.D. Waterhouse Investor Services, Inc., Respondent

Case Number: 00-04028

Hearing Site: San Diego, California

REPRESENTATION OF PARTIES

For Claimant:

Arthur S. Leider
Investors Arbitration
Specialists
San Diego, California

For Respondent:

John L. Erickson, Jr., Esq.
Jones, Bell, Abbott, Fleming
& Fitzgerald L.L.P.
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: September 11, 2000

Claimant's Uniform Submission Agreement signed: August 28, 2000

Statement of Answer filed by Respondent T.D. Waterhouse Investor Services, Inc.: December 4, 2000

Respondent's Uniform Submission Agreement signed: December 4, 2000

CASE SUMMARY

Claimant alleged breach of fiduciary duty, breach of the duty of good faith and fair dealing, and negligence. The dispute involved the purchase and/or sale of Ancor Telecommunications, Inc. stock.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

RELIEF REQUESTED

Claimant requested not less than \$75,000.00 in compensatory damages, \$10,000.00 in legal fees, interest, and reimbursement for arbitration costs.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety, and sought reimbursement for arbitration costs.

OTHER ISSUES CONSIDERED AND DECIDED

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS AND CONCLUSIONS

The Panel dismisses with prejudice the Claimant's first cause of action; T.D. Waterhouse Investor Services, Inc. alleged breach of fiduciary duty in its execution of orders in the sellout of Ancor Telecommunications, Inc. shares.

The Claimant was highly concentrated in one stock, Ancor Telecommunications, Inc. Claimant was also heavily margined. The April 17th sellout was necessary to protect T.D. Waterhouse Investor Services, Inc.'s financial interest. It is noted that T. D. Waterhouse Investor Services Inc. is a "discount brokerage" that only takes orders from its customers and does not provide counsel or investment advise. Claimant's account equity fell substantially below T.D. Waterhouse Investor Services, Inc.'s minimum requirement. Consequently, T.D. Waterhouse Investor Services, Inc. had no choice but to sell Claimant's Ancor Telecommunications, Inc. shares. On April 14th, T.D. Waterhouse Investor Services, Inc. tried to contact Claimant without success. T.D. Waterhouse Investor Services, Inc. left a message for Claimant to return the call within 10 minutes. However, Claimant was on vacation. T.D. Waterhouse Investor Services, Inc. tried to contact Claimant on April 14th to discuss the gravity of the situation and afford Claimant an opportunity to enter his own liquidation order. Liquidation was made the following business day.

Claimant repeatedly affirmed that he was aware of T.D. Waterhouse Investor Services, Inc.'s right to sell shares to protect its financial interest in the account. The Panel finds that T.D. Waterhouse Investor Services, Inc. acted in a manner consistent with discount brokerage practices.

The panel dismisses with prejudice Claimant's additional claim for damages for a second sellout on April 18th of 3275 Ancor Telecommunications, Inc. shares by a T.D. Waterhouse Investor Services, Inc. employee who did not have current information on the precarious status of Claimant's account. Said employee was a telephonic customer service employee and had no authority to bind T.D. Waterhouse Investor Services, Inc. In fact, the employee told Claimant that he had to verify and act upon any information given during the telephone call.

While all concerned regret the losses that Claimant suffered, such losses often occur in accounts that are highly margined and heavily concentrated in a single equity. Claimant was aware that the stock was sinking and owed a duty to himself to maintain constant vigilance on his account.

AWARD

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

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 225.00
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Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm T.D. Waterhouse Investor Services, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 1,500.00</u>
Total Member Fees	= \$ 3,100.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

1 Pre-hearing conference session with the Panel @ \$ 750.00/session	= \$ 750.00
Pre-hearing conference: May 10, 2001 1 session	
2 Hearing sessions @ \$ 750.00/session	= \$ 1,500.00
Hearing: August 28, 2001 2 sessions	
Total Forum Fees	= \$ 2,250.00

1. The Panel assessed \$ 1,125.00 of the forum fees to Claimant Tillson Family Trust.
2. The Panel assessed \$ 1,125.00 of the forum fees to Respondent T.D. Waterhouse Investor Services, Inc.

Fee Summary

1. Claimant Tillson Family Trust is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 1,125.00</u>
Total Fees	= \$ 1,350.00
<u>Less payments</u>	<u>= \$ (975.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 375.00

2. Respondent T.D. Waterhouse Investor Services, Inc. is charged with the following fees and costs:


Member Fees	= \$ 3,100.00
<u>Forum Fees</u>	<u>= \$ 1,125.00</u>
Total Fees	= \$ 4,225.00
<u>Less payments</u>	<u>= \$(3,100.00)</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,125.00

All balances are payable to NASD Dispute Resolution, Inc. and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

James H. Bowersox	-	Public Arbitrator, Presiding Chair
Leslie Jordan	-	Public Arbitrator
Jo-Ann C. Little	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


James H. Bowersox
Chair, Public Arbitrator

9-14-01
Signature Date

Leslie Jordan
Public Arbitrator

Signature Date

Jo-Ann C. Little
Non-Public Arbitrator

Signature Date


Date of Service

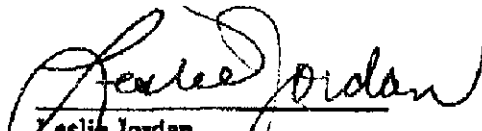
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Leslie Jordan
Public Arbitrator

Signature Date



Jo-Ann C. Little
Non-Public Arbitrator

9-13-01

Signature Date

9/14/01

Date of Service