

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Michael Vicari, (Claimant) vs. T.D. Waterhouse Investor Services, Inc., (Respondent)

Case Number: 00-04217

Hearing Site: Boston, Massachusetts

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**REPRESENTATION OF PARTIES**

Claimant, Michael Vicari, hereinafter referred to as "Claimant", appeared *pro se*.

Respondent, T.D. Waterhouse Investor Services, Inc., hereinafter referred to as "Respondent": Janis Campanella, Esq., Assistant Counsel, T.D. Waterhouse Investor Services, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 26, 2000

Claimant signed the Uniform Submission Agreement: September 15, 2000

Statement of Answer filed by Respondent on or about: January 26, 2001

Respondent signed the Uniform Submission Agreement: January 26, 2001

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; errors/charges; margin calls; negligence; failure to supervise; unjustified executions; breach of fiduciary duty; misrepresentations/non-disclosures; unauthorized trading; churning; omissions of fact; manipulations; disputed transfers, sell outs and stock loans; and raiding disputes. The causes of action relate to Respondent's liquidation of various stock purchased on margin without providing Claimant the opportunity to meet the margin call.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant failed to state a claim upon which relief may be granted; Claimant suffered no damages as a result of any action taken by Respondent; Respondent's action were duly authorized by Claimant; Respondent fully discharged all duties owed to Claimant; Respondent carried out its duties to Claimant in conformity with all relevant industry regulations, conventions and applicable laws; and Respondent acted in good faith.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$40,000.00; punitive damages in the amount of \$40,000.00 or an amount the Panel deems proper; and reimbursement for all costs, expenses and disbursements associated with these proceedings, including the filing fee.

Respondent requested dismissal of Claimant's claims in their entirety; and that Claimant be assessed all costs, expenses and disbursements associated with these proceedings.

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

During the hearing, the Respondent made a Motion to Dismiss Claimant's claims. The Panel denied the Respondent's motion.

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.

### **AWARD**

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

1. Respondent be and hereby is liable for and shall pay to Claimant compensatory damages in the sum of \$16,000.00, without interest.
2. Claimant's request for punitive damages is denied.
3. All other requests for relief are hereby denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 225.00
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#### **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 events giving rise to the dispute. In this matter, T.D. Waterhouse Investor Services, Inc., is a party.

Member surcharge	= \$ 1,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 1,500.00

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), 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 Panel x \$750.00	= \$ 750.00
Pre-hearing conference: November 20, 2001 1 session	

Five (5) Hearing sessions x \$750.00	= \$ 3,750.00
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Hearing Date:	February 20, 2002	1 session
	May 16, 2002	2 sessions
	May 17, 2002	2 sessions

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Total Forum Fees	= \$ 4,500.00
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1. The Panel has assessed \$2250.00 of the forum fees against Claimant.
2. The Panel has assessed \$2250.00 of the forum fees against Respondent.

Fee Summary

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 2,250.00</u>
Total Fees	= \$ 2,475.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,500.00

2. Respondent be and hereby is solely liable for:

Member Fees	= \$ 3,100.00
<u>Forum Fees</u>	<u>= \$ 2,250.00</u>
Total Fees	= \$ 5,350.00
<u>Less payments</u>	<u>= \$ 3,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,250.00

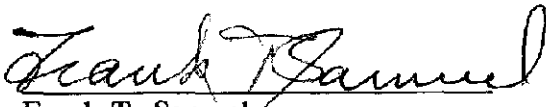
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Frank T. Samuel	-	Public Arbitrator, Presiding Chair
Bernard N. Roth	-	Public Arbitrator
Joseph J. Slotnik	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Frank T. Samuel  
Public Arbitrator, Presiding Chair

05-31-02  
Signature Date

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Bernard N. Roth  
Public Arbitrator

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

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Joseph J. Slotnik  
Industry Arbitrator

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Signature Date

June 13, 2002  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

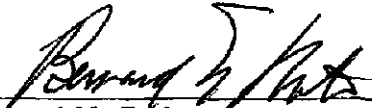
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