

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

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In the Matter of the Arbitration Between:

William Ganci and Kathleen Ganci, (Claimants) vs. TD Waterhouse Investor Services, Inc.,  
(Respondent)

Case Number: 00-04294

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, William Ganci ("W. Ganci") and Kathleen Ganci ("K. Ganci"), hereinafter collectively referred to as "Claimants": Jerry I. Lefkowitz, Esq., a sole practitioner, Lake Success, NY.

Respondent, TD Waterhouse Investor Services, Inc., hereinafter referred to as "Respondent": April M. Chung, Esq., Theodore A. Krebsbach & Associates, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 25, 2000.

W. Ganci signed the Uniform Submission Agreement: September 11, 2000.

K. Ganci signed the Uniform Submission Agreement: September 11, 2000.

Statement of Answer filed by Respondent on or about: July 12, 2001.

Respondent did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following cause of action: unauthorized sale of Qualcomm Inc. stock.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Respondent acted in good faith and in compliance with all applicable rules and regulations; Respondent discharged its responsibilities in good faith and in a professional and ethical manner; Claimants did not reasonable rely on any wrongful action or inaction by Respondent; the allegations related to compensatory damages are conclusory and fail to set forth facts sufficient to state a claim for recovery of such damages; Claimants' claims are barred by the defenses of estoppel, waiver, ratification, and laches; and Claimants are barred from recovery because they failed to mitigate their damages.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$50,000.00, plus interest, costs, disbursements, and reasonable attorneys' fees.

Respondent requested that the Statement of Claim be dismissed in all respects, and that disbursements and costs be assessed against Claimants.

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

Respondent did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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. Claimants' claims are hereby dismissed in their entirety.
2. Each party shall bear its own costs.
3. All other requests for relief are hereby denied.

### **FEEES**

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	= \$ 175.00
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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, TD Waterhouse Investor Services, Inc. is a party.

Member surcharge	= \$ 800.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$1,000.00

### **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 arbitrators, 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 \$600.00	= \$ 600.00
Pre-hearing conference: December 18, 2001	1 session

Two (2) Hearing sessions x \$600.00	= \$1,200.00
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Hearing Date: May 7, 2002	2 sessions
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Total Forum Fees	= \$1,800.00
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1. The Panel has assessed \$900.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$900.00 of the forum fees against Respondent.

### **Fee Summary**

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$1,075.00
<u>Less payments</u>	= \$ 975.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 100.00

2. Respondent be and hereby is solely liable for:

Member Fees	= \$2,400.00
<u>Forum Fees</u>	<u>= \$ 900.00</u>
Total Fees	= \$3,300.00
<u>Less payments</u>	<u>= \$3,000.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 300.00

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

NASD Dispute Resolution, Inc.  
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**ARBITRATION PANEL**

Charles Kleinbaum, Esq.	-	Public Arbitrator, Presiding Chair
Judith Fields Journey, Esq.	-	Public Arbitrator
Charles L. Henderson, Esq.	-	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.

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Charles Kleinbaum, Esq.  
Public Arbitrator, Presiding Chair

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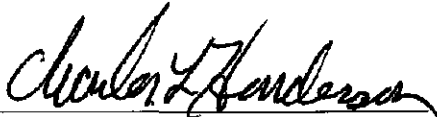
Signature Date

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Judith Fields Journey, Esq.  
Public Arbitrator

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Signature Date

  
Charles L. Henderson, Esq.  
Industry Arbitrator

  
Signature Date

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Date of Service (For NASD office use only)

**ARBITRATION PANEL**

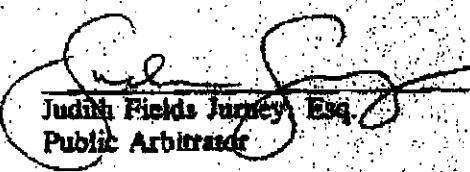
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Charles Kleinbaum, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

  
Judith Fields Jurney, Esq.  
Public Arbitrator

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Signature Date

Charles L. Henderson, Esq.  
Industry Arbitrator

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Signature Date

June 14, 2002  
Date of Service. (For NASD office use only)

**ARBITRATION PANEL**

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