

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Kevin Chiu, Claimant v. TD Waterhouse Investor Services, Inc., Respondent

Case Number: 00-04485

Hearing Site: San Francisco, CA

REPRESENTATION OF PARTIES

For Claimant:

Richard Sacks
Irving Stein
Two Commercial Blvd.
Suite 203C
Novato, CA 94949

For Respondent:

Cara L. Finan, Esq.
Keesel Young & Logan
Four Embarcadero Center
Suite 1500
San Francisco, CA 94111

CASE INFORMATION

Statement of Claim filed: October 9, 2000

Claimant's Uniform Submission Agreement signed: August 29, 2000

Statement of Answer filed by Respondent: November 15, 2000

Respondent's Uniform Submission Agreement signed: November 13, 2000

Respondent filed an Amended Statement of Answer: March 30, 2001

CASE SUMMARY

Claimant alleged that Respondent failed to give adequate notice to him before liquidating securities in his account to cover a maintenance call. Claimant also alleged that Respondent's computer system was malfunctioning during the time of the alleged unauthorized sell-out. Further, Claimant alleged that had Respondent's personnel been properly trained, they would have advised him in advance to deposit funds into his account, thereby preventing a sell-off.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim. Respondent further alleged several affirmative defenses, including that Claimant failed to state a cause of action upon which relief could be granted; Claimant suffered no damages as a result of any actions taken by Respondent; Respondent's actions were duly authorized by Claimant; and Respondent fully discharged its duties and carried those duties out in conformity with all relevant regulations and laws.

Respondent included additional affirmative defenses to the Statement of Claim, including that Claimant authorized and ratified the disputed transactions; Claimants proximately caused the alleged losses; Claimant was aware of the risks; Claimant failed to mitigate the purported damages; Claimant is estopped from asserting any claims because of his conduct; and Claimant's claims are barred by the equitable doctrine of laches.

RELIEF REQUESTED

Claimant requested \$21,000 (compensatory damages), unspecified punitive damages.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

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.

AWARD

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

- 1) The claims are denied because Claimant failed to demonstrate the charges that Respondent's computer systems were unavailable and that Respondent's personnel were inadequately trained.
- 2) Each party shall bear its own costs, including attorney's fees, except, Claimant shall pay Respondent \$2835 in attorney's fees for sanctions assessed against the Claimant for non-compliance with discovery orders, resulting in additional attorney's fees for Respondent. The support for the granting of attorney's fees sanctions is NASD Notice to Member 99-90 (Section VIII-Sanctions.)
- 3) All other relief 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 = \$ 125

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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm is a party and the following fees are assessed:

Member Surcharge = \$ 400

Total Member Fees = \$ 400

Adjournment Fees

The following adjournment fees are assessed:

Hearing Dates, May 8, 2001 and May 9, 2001 requested by Claimant = \$ 450

Forum Fees and Assessments

The Arbitrator 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 Arbitrator. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$ 450/session = \$ 450
Pre-hearing conference March 14, 2001 1 session

Three (3) Hearing sessions @ \$450/session = \$1350
Hearings: May 8, 2001 1 session
July 26, 2001 1 session
July 27, 2001 1 session

Total Forum Fees = \$1800

1. The Arbitrator assessed \$900 of the forum fees to Claimant.
2. The Arbitrator assessed \$900 of the forum fees to Respondent.

Fee Summary

Claimant is charged with the following fees and costs:

Initial Filing Fee = \$ 125

Adjournment Fee = \$ 450

Forum Fees = \$ 900

Total Fees = \$1475

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<u>Less Payments</u>	= \$(575)
Balance Due NASD Dispute Resolution, Inc.	= \$ 900

Respondent is charged with the following fees and costs:

Member Fees	= \$ 400
Adjournment Fee	= \$ 0
<u>Forum Fees</u>	= \$ 900
Total Fees	= \$1300
<u>Less Payments</u>	= \$ (400)
Balance Due NASD Dispute Resolution, Inc.	= \$ 900

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


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ARBITRATION PANEL

Homer M. Dalbey

Public Arbitrator, Presiding Chair

Arbitrator's Signature


Homer M. Dalbey
Chair, Public Arbitrator

Aug. 23, 2001
Signature Date

Date Served:

AUG 24 2001

Date of Service