

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Nathan and Genia Stark, JTWROS, (Claimants) vs. TD Waterhouse Investor Services, Inc., Louis Giacalone, Janet Gold, Benjamin F. Bryan, Anthony Goglia and John Doe(s) 6-10, Federated Management, Inc., Stanley R. Smith, John P. Gavey, Daniel F. Librie, Eliss Whatever, Lawrence M. Waterhouse, Jr., and Thomas Textor, (Respondents)

Case Number: 00-05702

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Claimants, Nathan Stark ("N. Stark") and Genia Stark ("G. Stark"), hereinafter collectively referred to as "Claimants": Martin J. Gofberg, Representative for Claimants, Equitable Resolutions Group, LLC, Valley Stream, NY.

Respondents, TD Waterhouse Investor Services, Inc., ("TDW"), Louis P. Giacalone ("Giacalone"), Janet L. Gold Aitken ("Gold"), Benjamin F. Bryan ("Bryan"), Anthony Goglia ("Goglia"), John P. Gavey ("Gavey"), Daniel F. Librie ("Librie"), Eliss Whatever ("Whatever"), Lawrence M. Waterhouse, Jr. ("Waterhouse"), and Thomas Textor ("Textor"), hereinafter collectively referred to as "Respondents TD Waterhouse": April M. Chung, Esq., Theodore A. Kresbach & Associates, PC, New York, NY.

Respondent, Stanley R. Smith ("Respondent Smith"), did not appear at the hearing in this matter. Previously represented by: Lauryn J. Hart, Esq., Herrick, Feinstein, LLP, New York, NY.

Respondent, Federated Management, Inc. ("Respondent Federated"), did not appear at the hearing in this matter.

CASE INFORMATION

Statement of Claim filed on or about: December 19, 2000.

Claimants N. Stark and G. Stark signed the Uniform Submission Agreement: December 12, 2000. Claimants signed an amended Uniform Submission Agreement: July 10, 2001.

Claimants' Amended Statement of Claim, Reply to Respondents TD Waterhouse's Answer, Motion to Dismiss and Counterclaim, and Claimants' Amended Statement of Claim as to Punitive Damages, filed on or about: July 2, 2001.

Claimants filed their Reply to Respondents' Answer and Motion to Dismiss Claimants' Amended Statement of Claim on or about: October 18, 2001.

Claimants withdrew their claim against Respondent Federated without prejudice by letter on: November 9, 2001.

Statement of Answer, Motion to Dismiss and Counterclaim filed by Respondents TD Waterhouse on or about: May 21, 2001.

Respondents TD Waterhouse did not sign the Uniform Submission Agreements.

Respondents TD Waterhouse filed their Answer and Motion to Dismiss Claimants' Amended Statement of Claim on or about: August 17, 2001.

Respondents TD Waterhouse filed their Response to Claimants' Reply to Respondents' Answer and Motion to Dismiss on or about: November 8, 2001.

Statement of Answer filed by Respondent Smith on or about: May 29, 2001.

Respondent Smith signed the Uniform Submission Agreement: June 14, 2001.

CASE SUMMARY

Claimants asserted the following causes of action: Violation of the NASD Rules of Fair Practice, including Section 2110, 2310(a), 2120 and 3020, and NYSE Rule 405 and 476(a); breach of fiduciary duty; unsuitability of trading on margin and failure to advise or disclose risks associated with high degree of leverage investing in violation of NASD 2310(b)(1-4); SEC shingle theory; fraud and/or misrepresentation; negligence; substantial breakdown of compliance function; failure to supervise and negligent supervision; breach of contract and/or pre-existing duty; incapacity; equitable estoppel; rescission; and punitive damages are appropriate.

Unless specifically admitted in their Answer, Respondents TD Waterhouse denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; Respondents acted in good faith and in compliance with all applicable rules and regulations; there is no private right of action for violation of NASD rules and regulations; Claimants did not reasonably rely on any wrongful action or inaction by Respondents; allegations related to compensatory damages are conclusory and fail to set forth sufficient facts to state a claim for recovery; Claimants failed to mitigate damages; supervision by Respondents was reasonable and adequate under the circumstances; Respondents discharged their responsibilities in good faith and in a professional and ethical manner; and the facts do not support a claim for punitive damages as a matter of law.

In their Counterclaim, Respondents TD Waterhouse asserted the following causes of action: failure to pay unsecured debit balance; acts of bad faith and breach of contractual obligation.

Unless specifically admitted in their Reply, Claimants denied the allegations in the

Counterclaim and asserted the following defenses: Respondents' gross negligence in management and supervision of the account caused its own economic damages and bars recovery on the Counterclaim; and wrongful harassment throughout collection process.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages in the amount of \$689,110.26, and the return of all commission and margin interest fees, plus interest at the rate of 12 percent;
2. Punitive damages in the amount of \$ 1,000,000;
3. Disciplinary Referral for Respondents to the NASD Business Conduct Committee;
4. Respondents TD Waterhouse's Counterclaim be dismissed in its entirety; and
5. All costs, fees and disbursements of these proceedings, including expert witness fees, attorneys' fees, and any other assessments that the Panel deems proper, be assessed against Respondents.

Respondents TD Waterhouse requested that Claimants' claim be dismissed in their entirety, and all costs, fees and disbursements of these proceedings be assessed against Claimants, and that all references to this arbitration be expunged from Respondents TD Waterhouse's CRD records.

OTHER ISSUES CONSIDERED AND DECIDED

Claimants withdrew without prejudice their claims against Respondent Federated prior to the hearing in this matter.

Respondent Smith reached a settlement with Claimants prior to the hearings in this matter.

The arbitrators reviewed all submissions and considered oral arguments regarding Respondents TD Waterhouse's Motion to Dismiss. On November 28, 2001, after due deliberation, the Panel granted Respondents TD Waterhouse's Motion to Dismiss Claimants' Statement of Claim and First Amended Statement of Claim with respect to Gold, Bryan, Giacalone, Goglia, Gavey, Librie and Whatever. The Panel denied the Motion to Dismiss without prejudice with respect to Textor and Waterhouse

Respondents TD Waterhouse did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim and/or appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

During the hearing in this matter, Respondents TD Waterhouse advised the Panel that they were withdrawing their Counterclaim.

Chairperson Vicki Holleman, Esq. dissented from the majority of the Panel with respect to the Award in this matter.

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. TDW be and hereby is solely liable for and shall pay to Claimants the sum of \$220,659.00 as compensatory damages.
2. All claims against all other Respondents are hereby dismissed in their entirety.
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	= \$ Waived
Counter claim filing fee	= \$ 1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. In this matter, TD Waterhouse Investor Services, Inc. is a party.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$ 1,200.00	= \$ 2,400.00
Pre-hearing conferences: October 31, 2001 1 session	
November 19, 2001 1 session	

Eight (8) Hearing sessions x \$ 1,200.00	= \$ 9,600.00
Hearing Dates: April 17, 2002 2 sessions	
April 18, 2002 2 sessions	
April 23, 2002 2 sessions	
April 29, 2002 2 sessions	

Total Forum Fees	= \$ 12,000.00
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1. The Panel has assessed \$6,000.00 of the forum fees against Claimants.
2. The Panel has assessed \$6,000.00 of the forum fees against TDW.

Fee Summary

1. Claimants be and hereby is solely liable for:

Forum Fees	= \$ 6,000.00
Total Fees	= \$ 6,000.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 6,000.00

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2. Respondent TDW be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 7,600.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$14,600.00
<u>Less payments</u>	<u>= \$11,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 3,500.00

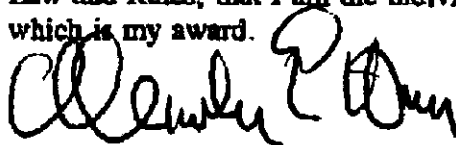
All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL


Vicki Z. Hollerman, Esq. - Industry Arbitrator, Presiding Chair
Alexander Eltman, Esq. - Public Arbitrator
David Nydick - Public 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.



Alexander Eltman, Esq.
Public Arbitrator



Signature Date

David Nydick
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

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

Chairperson Hollerman Dissented from the majority of the panel with respect to the Award in this matter and her opinion is as follows:

"Although it is regrettable that Claimants failed to meet margin calls and therefore incurred a monetary loss, I believe the claim should be dismissed as a matter of law."

Vicki Z. Hollerman, Esq.
Industry Arbitrator, Presiding Chair

Signature Date

June 13, 2002

Date of Service (For NASD office use only)

ARBITRATION PANEL


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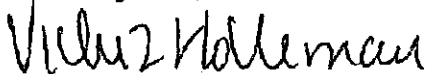
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Vicki Z. Holleman, Esq.
Industry Arbitrator, Presiding Chair

6/10/02
Signature Date

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