

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

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In the Matter of the Arbitration Between

Name of Claimant

Byron Hartman

Case No. 01-01390

Name of Respondents

TD Waterhouse Investor Services, Inc.; and  
David B. Slusarski

Hearing Site: Milwaukee, Wisconsin

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**REPRESENTATION OF PARTIES**

Claimant Byron Hartman ("Hartman") was represented by Doug Hartman of New Berlin, Wisconsin.

Respondents TD Waterhouse Investor Services, Inc. ("TD Waterhouse") and David B. Slusarski ("Slusarski"), hereinafter collectively referred to as "Respondents", were represented by Miles D. Hart, Esq., of the firm of Hertz, Schram & Saretsky, P.C., located in Bloomfield Hill, Michigan.

**CASE INFORMATION**

Statement of Claim filed on or about: March 20, 2001.

Claimant signed the Uniform Submission Agreement:

Statement of Answer filed by Respondents on or about: May 15, 2001.

Respondent TD Waterhouse signed the Uniform Submission Agreement: May 15, 2001.

Respondent David B. Slusarski did not file an executed submission agreement.

Motion to Dismiss filed by Respondent David B. Slusarski on or about: May 15, 2001.

No Response was filed to the Motion to Dismiss.

**CASE SUMMARY**

Claimant asserted that Respondents told him before he transferred his account that it would meet

the requirements at TD Waterhouse. However, Respondents negligently accepted transfer of his account even though it required a higher maintenance than his previous firm, creating a margin call immediately upon transfer.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant has failed to state a cause of action against Respondents upon which relief can be granted;
2. Claimant suffered no damage as the result of any action by Respondent;
3. Claimant failed to take any action to mitigate damages;
4. Respondents acted at all times in accordance with Claimant's direction and fully discharged all duties owed to Claimant;
5. Respondents carried out its duties to Claimant in conformity with all relevant industry regulations, conventions and applicable laws; and,
6. Respondents acted in good faith at all times.

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$50,000.00
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Respondents requested that the statement of claim be dismissed in its entirety and that Claimant bear all costs of this proceeding.

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

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

Respondent Slusarski presented a Motion to Dismiss at hearing. Claimant did not oppose the Motion. The Arbitrator granted the motion and the claims against Respondent David B. Slusarski are dismissed with prejudice.

#### **AWARD**

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

1. The claims asserted by Claimant Byron Hartman are dismissed and denied in their entirety;
2. The Panel recommends the expungement of all reference to the above captioned

arbitration from Respondent David B. Slusarski's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent David B. Slusarski must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;

3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those specifically enumerated herein; and,
4. Any and all relief not specifically addressed herein is 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	= \$ 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, the member firm is a party.

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

#### **Adjournment Fees**

Adjournments requested during these proceedings: None.

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

The arbitrator has the authority to assess forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference:      October 26, 2001      1 session	
One (1) Hearing sessions x \$450.00	= \$ 450.00
Hearing Date:      January 8, 2002      1 session	
Total Forum Fees	= \$ 900.00

The arbitrator has assessed \$900.00 of the forum fees to Claimant Byron Hartman.

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### Fee Summary

Claimant Byron Hartman is solely liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 900.00
Total Fees	= \$1,075.00
Less payments	= \$ 675.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 450.00

Respondent TD Waterhouse Investor Services, Inc. is solely liable for:

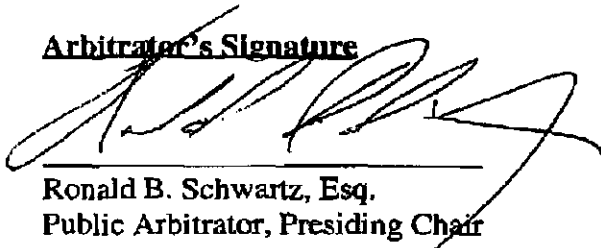
Member Fees	= \$2,400.00
Less payments	= \$2,400.00
Balance Due NASD Dispute Resolution, Inc.	= \$ .00

All balances are due to NASD Dispute Resolution, Inc.

### ARBITRATION PANEL

Ronald B. Schwartz, Esq. – Public Arbitrator, Presiding Chair

Arbitrator's Signature



Ronald B. Schwartz, Esq.  
Public Arbitrator, Presiding Chair

2/13/2002  
Signature Date

2/15/02 *Heu*  
Date of Service (For NASD-Dispute Resolution office use only)