

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Joseph Charles Barna IRA

and

03-00517
Nashville, Tennessee

Name of Respondents

TD Waterhouse Investor Services, Inc.

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Joseph Charles Barna IRA ("**Claimant**") was represented by W. Martin Seiler, Esq., Memphis, Tennessee.

TD Waterhouse Investor Services, Inc. ("**Respondent**") was represented by Miles D. Hart, Esq. and Eric Michaels, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about January 22, 2003. Submission Agreement of Claimant Joseph Charles Barna IRA was signed on January 17, 2003.

Statement of Answer was filed by Respondent TD Waterhouse Investor Services, Inc. on or about . Submission Agreement of Respondent TD Waterhouse Investor Services, Inc. was signed on April 2, 2003 by

CASE SUMMARY

Claimant alleged that

Respondent engaged in negligence, mismanagement, misrepresentation, bad advise [sic], failure to properly supervise the broker's staff and allowing Barna's account to become over concentrated and failed to inform of the high risk involved with margin accounts.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated:

At all times relevant, Claimant, Joseph Charles Barna, maintained both a self-directed margin account and Individual Retirement Account ("IRA") with Waterhouse. Mr. Barna effected various purchase and sale transactions in the accounts, all of which were carried out by Waterhouse in accordance with Mr. Barna's instructions.

In or about June 2000, Mr. Barna purchased a total of 16,000 shares of harmonic, Inc. ("HLIT") – 13,000 of those shares were purchased in his margin account, created a ha highly concentrated margin position in HLIT. (The balance of 3,000 shares were purchased in his IRA.)

Based on the concentrated position and prevailing market conditions, over the ensuing months, Mr. Barna's margin account became subject to margin maintenance calls. Rather than deposit additional funds, Mr. Barna effected several distributions from his IRA, directing that monies and securities be transferred to his margin account. Mr. Barna designated those distributions as "Normal" and specifically certified, in writing, as follows: "I certify that this withdrawal complies with the provisions of the Traditional IRA...and the Internal Revenue Service Code. TD Waterhouse and its affiliates mat rely on my certification without further investigation or inquiry." TD Waterhouse carried out the distributions in accordance with Mr. Barna's instructions.

RELIEF REQUESTED

Claimant requested an award in the amount of \$135,389.21, interest, attorneys' fees, and such other relief as this arbitration panel deems just and appropriate.

Respondent requested that the Statement of Claim be dismissed in its entirety and that Claimant be made to bear all expenses of Respondent in connection with this matter.

OTHER ISSUES CONSIDERED & DECIDED

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

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

1. The claims asserted in this matter shall be and hereby are denied in their entirety.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee = \$300.00

Member Fees

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

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s), June 28 & 29, 2004 adjournment requested by Claimant (waived)	= \$1,125.00
Hearing Date(s), December 6 & 7, 2004 adjournment requested by Claimant (waived)	= \$1,500.00

Forum Fees and Assessments

The Arbitration 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 arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1	Pre-hearing session(s) with Panel	x	1,125.00	\$	1,125.00
	December 5, 2003	1	session		
3	Hearing sessions	x	1,125.00	\$	3,375.00
	April 18, 2005	2	sessions		
	April 19, 2005	1	session		
	Total Forum Fees			\$	4,500.00

The Arbitration Panel has assessed \$4,500.00 of the forum fees to TD Waterhouse Investor Services, Inc.

Fee Summary

Claimant, Joseph Charles Barna IRA, shall be and hereby is liable for:

Initial Filing Fee	= \$	300.00
Total Fees	= \$	300.00
<u>Less payments</u>	= \$	-1,425.00
Balance to be refunded by NASD Dispute Resolution	= \$	-1,125.00

Respondent, TD Waterhouse Investor Services, Inc., shall be and hereby is liable for:

Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	4,500.00
Total Fees	= \$	9,700.00
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	4,500.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Hugh J. Moore, Jr., Esq. - Public Arbitrator, Presiding Chair
Steven P. Gregory, Esq. - Public Arbitrator
Phil Lubetkin - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Hugh J. Moore, Jr.
Hugh J. Moore, Jr., Esq.
Public Arbitrator, Presiding Chair

May 3, 2005
Signature Date

/s/ Steven P. Gregory
Steven P. Gregory, Esq.
Public Arbitrator

May 3, 2005
Signature Date

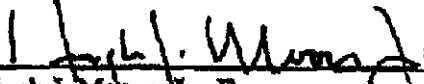
/s/ Phil Lubetkin
Phil Lubetkin
Non-Public Arbitrator

May 3, 2005
Signature Date

5/5/05
Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 03-00517
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Public Arbitrator, Presiding Chair

5/3/05

Signature Date

Steven P. Gregory, Esq.
Public Arbitrator

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