

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert H. Spence, Claimant v. TD Waterhouse Investor Services, Inc., Respondent

Case Number: 03-01072

Hearing Site: San Francisco, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Robert H. Spence
In Propria Persona
Corte Madera, California

For Respondent:

John L. Erikson, Esq.
Jones, Bell, Abbott, Fleming & Fitzgerald
Los Angeles, California

CASE INFORMATION

Statement of Claim filed: February 13, 2003

Statement of Answer and Counterclaim filed by Respondent: August 8, 2003

Answer to Counterclaim filed by Claimant: September 4, 2003

Claimant's Uniform Submission Agreement signed: February 10, 2003

Respondent's Uniform Submission Agreement signed: August 12, 2003

CASE SUMMARY

Claimant/Counter-Respondent, hereinafter "Claimant," alleged breach of fiduciary duty, breach of contract and negligence. Claimant's allegations involved transactions in CBMI and IFCI stock.

Respondent/Counter-Claimant, hereinafter "Respondent," denied the allegations of wrongdoing set forth in Claimant's Statement of Claim, asserted various affirmative defenses and filed a Counterclaim alleging breach of contract.

Claimant denied the allegations of wrongdoing set forth in Respondent's Counterclaim.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$55,324.73 and punitive damages in the amount of \$27,662.36.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety and costs. In its Counterclaim, Respondent requested compensatory damages in the amount of \$17,661.21, interest and costs.

Claimant requested dismissal of Respondent's Counterclaim in its entirety, costs, and that the Panel order Respondent to remove any and all derogatory, misreported and false facts reported to any and all public entities and credit bureaus.

OTHER ISSUES CONSIDERED AND DECIDED

On June 6, 2003, Claimant signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

At the hearing, the Claimant filed a motion to bar Respondent from presenting certain evidence at the hearing. After due deliberation, the Panel denied the motion.

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 Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant is liable to and shall pay Respondent the net sum of \$7,438.53 in compensatory damages. This amount is based upon the following ruling:
 - a. Claimant is liable to and shall pay Respondent \$17,661.21 in compensatory damages for Respondent's Counterclaim.
 - b. Respondent is liable to and shall pay Claimant \$10,222.68 in compensatory damages for Claimant's Statement of Claim.

The net sum of subparagraphs a and b above is \$7,438.53.

2. Claimant's request for punitive damages is denied.
3. The parties shall bear their respective costs, including attorney's fees.
4. All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 225.00
Respondent's Counterclaim	= \$ 750.00

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 TD Waterhouse Investor Services, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

Adjournment Fees

The following adjournment fees are assessed:

Adjournment of the January 2004 Hearing Dates requested by the parties;	
Fee assessed to Respondent	= \$ 750.00

Forum Fees and Assessments

The Panel 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 Chair/Panel. The following fees are assessed:

One (1) Pre-hearing conference session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: January 8, 2004 1 session	
One (1) Pre-hearing conference session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: August 29, 2003 1 session	
Two (2) Hearing sessions @ \$750.00/session	= \$ 1,500.00
Hearings: February 19, 2004 2 sessions	
Total Forum Fees	= \$ 2,700.00

The Panel assessed \$2,700.00 of the forum fees to Respondent.

Fee Summary

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 225.00
Less payments	= \$(975.00)
Refund Due from NASD Dispute Resolution	= \$(750.00)

2. Respondent is charged with the following fees and costs:

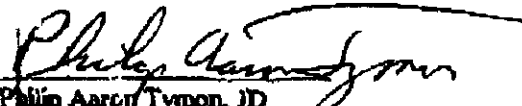
Counterclaim Filing Fee	= \$ 750.00
Member Fees	= \$ 3,550.00
Adjournment Fee	= \$ 750.00
Forum Fees	= \$ 2,700.00
Total Fees	= \$ 7,750.00
Less payments	= \$(5,500.00)
Balance Due NASD Dispute Resolution	= \$ 2,250.00

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

ARBITRATION PANEL

Philip Aaron Tymon, JD	-	Public Arbitrator, Presiding Chair
Benisa J. Berry	-	Public Public Arbitrator
Rody E. Thorwirth	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Philip Aaron Tymon, JD
Chair, Public Arbitrator

3/9/04
Signature Date

Benisa J. Berry
Public Arbitrator

Signature Date

Rody E. Thorwirth
Non-Public Arbitrator

Signature Date

3/9/04
Date of Service

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Benisa J. Berry	-	Public Public Arbitrator
Rudy E. Thorwirth	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Philip Aaron Tymon, JD
Chair, Public Arbitrator

Signature Date


Benisa J. Berry
Public Arbitrator

3/9/04
Signature Date

Rudy E. Thorwirth
Non-Public Arbitrator

Signature Date

3/9/04
Date of Service

ARBITRATION PANEL

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Benise J. Berry	-	Public Public Arbitrator
Rudy E. Thorwirth	-	Non-Public Arbitrator

Concerning Arbitrators' Signatures

Philip Aaron Tymon, JD
Chair, Public Arbitrator

Signature Date

Benise J. Berry
Public Arbitrator

Signature Date


Rudy E. Thorwirth
Non-Public Arbitrator

March 8, 2004
Signature Date

3/9/04
Date of Service