

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Omar Espinosa, Claimant v. T.D. Waterhouse Investor Services, Respondent

Case Number: 03-04785

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Richard Gibson, Esq.
Law Offices of Richard Gibson, APC
Los Angeles, California

For Respondent:

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

CASE INFORMATION

Statement of Claim filed: June 27, 2003

Claimant's Uniform Submission Agreement signed: June 20, 2003

Statement of Answer filed by Respondent: August 27, 2003

Respondent's Uniform Submission Agreement signed: August 26, 2003

CASE SUMMARY

Claimant alleged breach of contract, breach of fiduciary duty, negligence, negligent interference with contract, intentional interference with prospective economic advantage, and negligent interference with prospective economic advantage. Claimant's allegations involved the alleged failure of Respondent to sell all of the assets in Claimant's account and transfer the balance to Western Reserve Life.

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

RELIEF REQUESTED

Claimant requested \$85,000.00 in compensatory damages, \$255,000.00 in punitive damages, and costs.

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

OTHER ISSUES CONSIDERED AND DECIDED

On January 27, 2004, Claimant and Claimant's counsel 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.

On August 18, 2004, Respondent filed a Motion to Bar Claimant from Presenting Any Witnesses or Evidence at the Hearing. On August 20, 2004, Claimant filed an Opposition to the motion. On August 23, 2004, after due deliberation in an executive session, 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, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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	= \$ 300.00
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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 T.D. Waterhouse Investor Services is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

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 or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: May 24, 2004 1 session	
Two (2) Hearing sessions @ \$1,125.00 /session	= \$2,250.00
Hearings: August 23, 2004 2 sessions	
Total Forum Fees	= \$3,375.00

1. The Panel assessed \$1,687.50 of the forum fees to Claimant Omar Espinosa.
2. The Panel assessed \$1,687.50 of the forum fees to Respondent T.D. Waterhouse Investor Services.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 1,987.50
<u>Less payments</u>	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 562.50

2. Respondent T.D. Waterhouse Investor Services is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 6,887.50
<u>Less payments</u>	= \$(5,200.00)
Balance Due NASD Dispute Resolution	= \$ 1,687.50

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

Robert Rosen	-	Public Arbitrator, Presiding Chair
Cathleen M. Cobb	-	Public Arbitrator
David D. Holt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



August 24, 2004

Robert Rosen
Chair, Public Arbitrator

Signature Date

Cathleen M. Cobb
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature

David D. Holt
Non-Public Arbitrator

Signature Date

8/24/04
Date of Service

ARBITRATION PANEL

Robert Rosen	-	Public Arbitrator, Presiding Chair
Cathleen M. Cobb	-	Public Arbitrator
David D. Holt	-	Non-Public Arbitrator

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Robert Rosen
Chair, Public Arbitrator

Signature Date

Cathleen M. Cobb
Cathleen M. Cobb
Public Arbitrator

Aug. 24, 2004
Signature Date

Dissenting Arbitrator's Signature

David D. Holt
Non-Public Arbitrator

Signature Date

8/24/04
Date of Service

ARBITRATION PANEL

<i>Robert Rosen</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Cathleen M. Cobb</i>	-	<i>Public Arbitrator</i>
<i>David D. Holt</i>	-	<i>Non-Public Arbitrator</i>

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Robert Rosen
Chair, Public Arbitrator

Signature Date

Cathleen M. Cobb
Public Arbitrator

Signature Date

Dissenting Arbitrator's Signature



David D. Holt
Non-Public Arbitrator

8-24-04
Signature Date

8/24/04
Date of Service