
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Maria T. Gutierrez

Case Number: 04-00381

Name of the Respondent
TD Waterhouse Investor Services, Inc.

Hearing Site: Boca Raton, FL

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Claimant Maria T. Gutierrez ("Gutierrez") appeared pro se.

For TD Waterhouse Investor Services, Inc. ("TDWIS"), hereinafter referred to as "Respondent":
Peter B. King, Esq., Fowler White Boggs Banker P.A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: January 21, 2004
Claimant signed the Uniform Submission Agreement: January 10, 2004.
Statement of Answer filed by Respondent on or about: March 12, 2004.
Respondent signed the Uniform Submission Agreement: March 12, 2004.
Reply to Statement of Answer filed by Claimant on or about: March 22, 2004.

CASE SUMMARY

Claimant asserted the following: 1) Respondent failed to exercise due diligence and therefore failed to purchase the requested stock for Claimant; 2) Respondent was negligent; and 3) Respondent failed to act in a timely fashion. The causes of action relate to the purchase of shares of RNSNF stock.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

RELIEF REQUESTED

Claimant requested compensatory damages of \$10,335.50, plus interest of \$800.00, and punitive damages of \$5,000.00.

Respondent requested that all claims against it be dismissed and that Claimant be made to bear

all expenses of Respondent in connection with this matter.

OTHER ISSUES CONSIDERED AND DECIDED

The Respondent made an ore tenus Motion to Strike Exhibits at the commencement of the evidentiary hearing. The undersigned arbitrator determined that Claimant could only present documents already provided to Respondent as evidence or exhibits at the evidentiary hearing.

AWARD

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

1. Respondent is liable and shall pay to Claimant the sum of \$10,335.50 in compensatory damages, plus interest at the Florida statutory rate from April 29, 2003 until the date of payment of the Award. Damages are awarded based upon Respondent's failure to exercise due diligence in purchasing requested stock, Respondent's negligence and Respondent's failure to act in a timely fashion.
2. Respondent is liable and shall pay to Claimant the sum of \$125.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.
3. Any and all claims for relief not specifically addressed herein, including Claimant's claim for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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 = \$ 125.00

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. Accordingly, Claimant TDWIS is a member firm and a party.

Member surcharge = \$ 425.00

Adjournment Fees

Adjournment fees incurred during these proceedings:

July 13, 2004 hearing date, adjournment requested by Respondent. The Arbitrator has assessed the \$450.00 adjournment fee to Claimant. Claimant had not properly responded to discovery requests. This delay placed undue burden upon Respondent.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were incurred during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

No injunctive relief fees were incurred during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 the Arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: May 10, 2004	1 session
July 9, 2004	1 session
One (1) Hearing session with the Arbitrator @ \$450.00	= \$ 450.00
Hearing Date: September 28, 2004	1 session
Total Forum Fees	= \$1,350.00

The Arbitrator has assessed \$450.00 of the forum fees to Claimant.

The Arbitrator has assessed \$900.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 125.00
Forum Fees – July 9, 2004	= \$ 450.00
Adjournment Fee	= \$ 450.00

Total Fees	= \$1,025.00
<u>Less payments</u>	<u>= \$ 575.00</u>
Balance Due NASD Dispute Resolution	= \$ 450.00

Respondent is solely liable for:

Member Fees	= \$ 425.00
<u>Forum Fees</u>	<u>= \$ 900.00</u>
Total Fees	= \$1,325.00
<u>Less payments</u>	<u>= \$ 425.00</u>
Balance Due NASD Dispute Resolution	= \$ 900.00

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

ARBITRATOR

Bonnie A. Pearce

- Public Arbitrator, Presiding Chairperson

Arbitrator's Signature

/s/
Bonnie A. Pearce
Public Arbitrator, Presiding Chairperson

10/12/04
Signature Date

10/15/04
Date of Service (For NASD Dispute Resolution office use only)

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Total Fees	= \$1,025.00
<u>Less payments</u>	= \$ 575.00
Balance Due NASD Dispute Resolution	= \$ 450.00

Respondent is solely liable for:

Member Fees	= \$ 425.00
<u>Forum Fees</u>	= \$ 900.00
Total Fees	= \$1,325.00
<u>Less payments</u>	= \$ 425.00
Balance Due NASD Dispute Resolution	= \$ 900.00

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

ARBITRATOR

Bonnie A. Pearce

Public Arbitrator, Presiding Chairperson

Arbitrator's Signature



Bonnie A. Pearce
Public Arbitrator, Presiding Chairperson

October 12, 2004
Signature Date

Date of Service (For NASD Dispute Resolution office use only)