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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Names of the Claimants

Jesus R. Montero and  
Lucy Montero

Case Number: 04-02192

Name of the Respondent

T.D. Waterhouse Investor Services, Inc.

Hearing Site: Tampa, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Jesus R. Montero and Lucy Montero, hereinafter collectively referred to as "Claimants":  
James D. Keeney, Esq., James D. Keeney, P.A., Sarasota, Florida.

For T.D. Waterhouse Investor Services, Inc., hereinafter referred to as "Respondent": Peter B.  
King, Esq. And Lindsey Trowell, Esq., Tate, Lazarini & Beall, PLC, Tampa, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 25, 2004.

Claimants signed, but did not date, the Uniform Submission Agreement.

Statement of Answer filed by Respondent on or about: April 21, 2004.

Respondent signed the Uniform Submission Agreement: May 24, 2004.

Motion to Add Third Party Claim against Raymond Montero filed by Respondent on or about:  
March 8, 2005.

Response to Respondent's Motion to Add Third Party Claim against Raymond Montero filed by  
Claimants on or about: March 17, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) gross negligence; 2) negligence; 3) breach of fiduciary duty; 4) failure to supervise; and, 5) respondeat superior. The causes of action relate to the transfer of unspecified securities out of Claimants' account.

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

### **RELIEF REQUESTED**

Claimants requested an award against Respondent as follows: 1) for damages, exclusive of legal interest, costs and expenses in an amount of \$99,999.00, or such other amount to be determined based on the proof of specific damages to be presented before the arbitration Panel; 2) for all of Claimants' costs, expenses and disbursements; 3) for full reimbursement of all filing and forum fees; and, 4) for such other and further relief, including punitive damages, as the undersigned Arbitrators (the "Panel") deemed just and proper.

Respondent requested that the Panel: 1) enter an award denying the Claimants' claims in their entirety; 2) make a finding that the claim is clearly erroneous; and, 3) award Respondent its costs, including attorneys' fees and forum fees.

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

On or about April 10, 2005 the Panel issued an order denying Respondent's Motion for Leave to Assert Third Party Claim against Raymond Montero.

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, evidence and testimony presented at the evidentiary hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is found liable on the claims of negligence and breach of fiduciary duty and shall pay to Claimants compensatory damages in the amount of \$79,000.00.

Each party shall pay his own costs.

Any and all other claims for relief not specifically addressed herein, including Claimants' request 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	= \$ 225.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a party and a member firm.

Member surcharge	= \$1,110.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee	= \$1,750.00
Total Member Fees	= \$3,550.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter for which fees were assessed.

**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:

There were no three-day cancellation fees assessed 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.

There were no injunctive relief fees assessed 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Pre-hearing sessions with the Panel @ \$750.00/session	= \$2,250.00
Pre-hearing conferences:	
September 9, 2004	1 session
December 3, 2004	1 session
March 31, 2005	1 session
Seven (7) Hearing Sessions with the Panel @ \$750.00/session	= \$ 5,250.00
Hearing Dates:	
December 12, 2005	2 sessions
December 13, 2005	3 sessions
December 14, 2005	2 sessions
Total Forum Fees	= \$ 7,500.00

The Panel has assessed the total forum fees of \$ 7,500.00 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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Total Fees	= \$ 225.00
<u>Less payments</u>	<u>= \$ 255.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 3,550.00
<u>Forum Fees</u>	<u>= \$ 7,500.00</u>
Total Fees	= \$11,050.00
<u>Less payments</u>	<u>= \$ 3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,550.00

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

**ARBITRATION PANEL**

Richard Howard Gregory  
Brian G. Mooney, Esq.  
Barry M. Cheren

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/  
Richard Howard Gregory  
Public Arbitrator, Presiding Chairperson

December 21, 2005  
Signature Date

\_\_\_\_\_/s/  
Brian G. Mooney, Esq.  
Public Arbitrator

December 21, 2005  
Signature Date

\_\_\_\_\_/s/  
Barry M. Cheren  
Non-Public Arbitrator

December 21, 2005  
Signature Date

December 22, 2005

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

NASD Dispute Resolution

Arbitration No. 04-02192

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Barry M. Cheren

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Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Richard Howard Gregory  
Public Arbitrator, Presiding Chairperson

Signature Date

Brian G. Mooney, Esq.  
Public Arbitrator

Barry M. Cheren  
Non-Public Arbitrator

12-21-05  
Signature Date

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## NASD Dispute Resolution

Arbitration No. 04-02192

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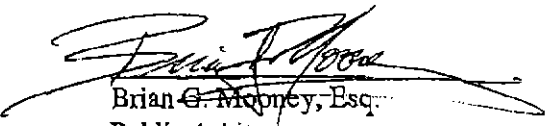
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 Brian G. Mooney, Esq.  
 Barry M. Cheren

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 Public Arbitrator  
 Non-Public Arbitrator

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 Public Arbitrator, Presiding Chairperson

Signature Date

  
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 Public Arbitrator

12/21/05  
 Signature Date

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NASD Dispute Resolution

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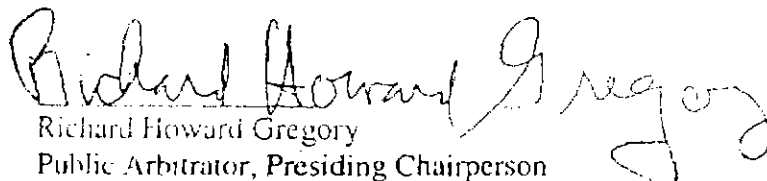
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Non-Public Arbitrator

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Richard Howard Gregory  
Public Arbitrator, Presiding Chairperson

12/21/05  
Signature Date

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