

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Joseph T. LaMarca and Thomas J. LaMarca, Claimants v. TD Waterhouse Investor Services, Inc. and Wendy M. Bryce, Respondents

Case Number: 06-00415

Hearing Site: San Diego, California

Nature of the Dispute: Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

Joseph T. LaMarca
In Propria Persona and as
Party Representative for
Thomas J. LaMarca
Temecula, California

For Respondents:

James J. Vihstadt, Esq.
TD Ameritrade
Bellevue, Nebraska

CASE INFORMATION

Statement of Claim filed: January 26, 2006

Amended Statement of Claim filed: April 10, 2006

Claimant Joseph T. LaMarca's Uniform Submission Agreement signed:
January 20, 2006

Claimant Thomas J. LaMarca's Uniform Submission Agreement signed:
February 7, 2006

Joint Statement of Answer and Motion to Dismiss filed by Respondents:
March 10, 2006

Respondent TD Waterhouse Investor Services, Inc.'s Uniform Submission Agreement
signed: March 9, 2006

Respondent Wendy M. Bryce's Uniform Submission Agreement signed:
February 24, 2006

CASE SUMMARY

Claimants alleged failure to execute, misrepresentation and non-disclosure, negligence, and failure to supervise. Claimants' allegations involve Respondents' alleged failure to sell Cisco Systems Inc. shares.

Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested \$7,413.93 in compensatory damages, \$2,000.00 in punitive damages, \$1,756.00 in interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On March 10, 2006, Respondents filed a Motion to Dismiss Claimants' Statement of Claim. On April 25, 2006, a telephonic pre-hearing conference was held, attended by Joseph T. LaMarca for Claimants, James J. Vihstadt, Esq. for Respondents, and the Arbitrator. After due deliberation, the Arbitrator granted the motion with respect to Respondent Wendy M. Bryce and denied the motion with respect to Respondent TD Waterhouse Investor Services, Inc.

On April 10, 2006, Claimants requested that an exhibit be added to their Statement of Claim. Respondents did not oppose Claimants' requested amendment to their Statement of Claim. On May 1, 2006 the Arbitrator granted Claimants' request.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

FINDINGS AND CONCLUSIONS

1. Claimant Joseph LaMarca attended the hearing alone. While Mr. LaMarca has read up on arbitration procedures, he has no practical experience in discovery or in testifying at a hearing. In consideration, both the Arbitrator and the Respondent gave great leeway to Mr. LaMarca during the hearing.
2. Respondent is not a full service brokerage. It provides customers with self-directed accounts on a discounted fee structure. Respondent does not provide the "bells and whistles" of full-service brokerages.
3. Mr. LaMarca asserted that he initiated an order to sell 350 shares of Cisco on December 21, 2000 and that Respondent failed to execute the order. Neither Claimants nor Respondent has any record of this order to sell.
4. Mr. LaMarca admitted that he received notice from Respondent of a margin call and that he agreed to a liquidation of 1,200 shares of Intel to cover the call. The evidence presented showed that proceeds from the sale of the Intel stock were insufficient to cover the margin call and that Respondent sold out 350 margined shares of Cisco stock from Claimant's account on December 20, 2000 to cover the balance owed. Respondent sent Claimant a confirmation of the sale of the Cisco shares. It is important to note that this confirmation was marked "WRMD S/O" which stands for Western Risk Management Department Sell Off.
5. On December 20, 2000, in order to meet the required minimum distribution of his separate IRA account, Mr. LaMarca placed an order to transfer 250 shares of Intel out of his IRA account and into his margin account.
6. Respondent admitted that it received the advice of Mr. LaMarca's IRA transfer a day late. Since Mr. LaMarca's transfer of the 250 shares of Intel from his IRA to his margin account was sufficient to cover the margin call, and because Respondent received the advice of the transfer a day late, Respondent reversed the sale of the 350 margined Cisco shares. In reversing the sale, Respondent incurred a loss of \$1,006.25, as the price of Cisco had increased since Respondent's initial sale of the stock.
7. Notwithstanding the fact that he admitted receiving the confirmation of the WRMD S/O sale, Mr. LaMarca asserted that no sale of the 350 shares of Cisco took place because the sale was not reflected on his account statement. Respondent presented testimony that it does not list sale reversals on customer account statements since the customer's position has not changed.
8. Respondent stated that the 350 shares of Cisco remained in the account and were reported on each monthly statement. Further, the year-end 1099 form for 2000 did not show a sale of the 350 shares of Cisco. Mr. LaMarca testified that neither he nor his son reviewed his monthly statement because they trusted Respondent to be correct.
9. The record is clearly in conflict with Mr. LaMarca's position that he ordered Respondent to sell 350 shares of Cisco on December 20, 2000.

AWARD

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

- 1) Claimants' 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	= \$ 75.00
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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 TD Waterhouse Investor Services, Inc. is a party and the following fees are assessed:

<u>Member Surcharge</u>	= \$325.00
Total Member Fees	= \$325.00

Forum Fees and Assessments

The Arbitrator assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the arbitrator, including a pre-hearing conference, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing conference session with a single arbitrator @ \$250.00/session	= \$250.00
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Pre-hearing conference: April 25, 2006	1 session
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Two (2) Hearing sessions @ \$250.00/session	= \$500.00
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Hearing: June 6, 2006	2 sessions
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Total Forum Fees	= \$750.00
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1. The Arbitrator assessed \$375.00 of the forum fees jointly and severally to Claimants.
2. The Arbitrator assessed \$375.00 of the forum fees to Respondent TD Waterhouse Investor Services, Inc.

Fee Summary

1. Claimants Joseph T. LaMarca and Thomas J. LaMarca are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 75.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 450.00
Less payments	= \$(325.00)
Balance Due NASD Dispute Resolution	= \$ 125.00

2. Respondent TD Waterhouse Investor Services, Inc. is charged with the following fees and costs:

Member Fees	= \$ 325.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 700.00
Less payments	= \$(325.00)
Balance Due NASD Dispute Resolution	= \$ 375.00

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.

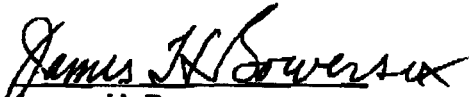
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ARBITRATION PANEL

James H. Bowersox

Public Arbitrator

Arbitrator's Signatures



James H. Bowersox
Chair, Public Arbitrator

06-23-06

Signature Date

6/23/06

Date of Service