

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

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CASE: 06-01087

Paul M. Goldberg (Claimant) vs. TD Waterhouse Investor Services, Inc., Matthew Alpert and Megan Otlowski, (Respondents)

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**ATTORNEYS:**

Claimant appeared *pro se*, Potomac, MD.

For Respondents appeared in-house counsel, James J. Vihstadt, Esq., Bellevue, NE.

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**NATURE OF DISPUTE:** Customer v. Member and Associated Persons

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**DATE FILED:** February 24, 2006

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**CASE SUMMARY:** Claimant alleged that Respondents negligently handled his account, omitted material facts regarding investments and made errors in his account. Claimant maintained that due to Respondents' actions, he suffered a financial loss. Claimant's claim involved a mutual fund.

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**ARBITRATOR'S REPORT:** See attached Exhibit A.

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**Claim Data**

Claim: \$652.00  
Punitive: \$1,800.00

**Award Data**

Award: \$652.00  
Punitive: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of the Claimant against Respondents Matthew Alpert and Megan Otlowski are dismissed in their entirety. 2) Respondent is TD Waterhouse Investor Services, Inc. is solely liable and shall pay to the Claimant \$652.00. 3) All requests for punitive damages are denied. 4) All other relief requests are denied. 5) Respondents Matthew Alpert's and Megan Otlowski's requests for expungement are denied. 6) NASD Dispute Resolution shall retain the \$75.00 filing fee that the Claimant deposited previously.

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**OTHER FEES:** Pursuant to Rule 10333 of the Code, Respondent, TD Waterhouse Investor Services, Inc., has paid to NASD Dispute Resolution the \$150.00 Member Surcharge previously invoiced.

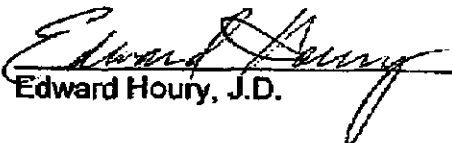
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Award 06-01087

Edward Houry, J.D.

Sole Public Arbitrator

AFFIRMATION

I, Edward Houry, J.D., do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

  
Edward Houry, J.D.

  
(Signature Date)

July 20, 2006  
Date of Service (For NASD-DR office use only)

# Exhibit A

## NASD DISPUTE RESOLUTION

In the Matter of the Arbitration Between: )  
PAUL M. GOLDGERG, )  
Claimant, )  
Versus ) Case Number No: 06-01087  
TD WATERHOUSE INVESTOR SERVICES. )  
MEGAN M. OTLOWSKI )  
MATTHEW D. ALPERT )  
Respondents, )

### REPRESENTATION OF PARTIES

Claimant, Paul M. Goldberg, 12300 Briarbrush Lane, Potomac, MD 20854

Respondents, James J. Vihstadt, TD Ameritrade, 1005 N. Ameritrade Pl., Bellevue, NE 68005

### FILING DATES

Statement of Claim filed on or about	February 24, 2006
Claimant's Uniform Submission Agreement filed on or about	February 24, 2006
Respondent's Uniform Submission Agreement filed on or about	May 4, 2006
Respondent's Answer to Statement of Claim and Motion To Dismiss filed on or about	May 5, 2006
Claimant's Response to Statement of Claim and Motion To Dismiss, filed on or about	May 15, 2006
Claimant's wife's letter filed on or about	May 15, 2006

### CASE SUMMARY

On August 25, 2005, Claimant and his wife went to the Bethesda, Maryland office of TD Waterhouse, where he had been a long-term client. Claimant advised Respondent, Client Service Specialist, Megan Otlowski, that he wanted to sell his AIM Equity Fund (AIM) and transfer the money to an SEP IRA account. Respondent advised that the transfer could be made to a new Traditional IRA account. The record includes no separate statement from Respondent, Otlowski, denying that she was instructed to sell AIM. Claimant completed and signed a form to open the IRA. Claimant also completed and signed an Account Transfer Form authorizing the transfer of the AIM.

Section 3C of the Account Transfer Form provided blocks that could be checked, none of which appear relevant, to authorize termination and transfer of insurance, transfer of stock from a dividend reinvestment plan, or liquidation of CDs. Respondent, TD Waterhouse, asserts that the Account Transfer Form includes a box, which, if checked, would direct the delivering firm to "liquidate shares." However, the Account Transfer Forms in the record did not include such a block.

Respondent, TD Waterhouse, sent Claimant an account statement dated September 30, 2005, indicating that Claimant still owned AIM, that it had been transferred to TD Waterhouse September 8, 2005, and that a dividend in the amount of \$126.30 had been earned. Claimant assumed AIM had been sold, and that he did not know he still owned AIM until he saw a statement around October 24, 2005. He contacted Respondent, Senior Branch Manager, Matthew Alpert, as to why the sale had not taken place, but was unable to resolve the matter.

Among other things, Respondent, TD Waterhouse, asserts that the Account Transfer Form authorized only a transfer of AIM, not a sale of AIM, and further, that Respondent did not own AIM on August 25, the date Claimant allegedly said he wanted to sell. Respondent, TD Waterhouse, does not explain why it did not consider Claimant's instructions a verbal order to sell, and why it did not execute that order after AIM was transferred to respondent September 8.

Claimant included hearsay evidence that was not specifically refuted by Respondent, TD Waterhouse, that compensatory damages for the failure to sell were \$652.00.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$652.00
Punitive Damages	\$1,800.00

### **RESPONDENT'S MOTION TO DISMISS**

Respondent, TD Waterhouse, asserts that Respondent, Otlowski's only involvement in this case was to assist Claimant with opening an account, that Respondent, Alpert's only involvement was attempting to address Claimant's concerns, that both were acting within their capacity as TD Waterhouse employees, and that TD Waterhouse will be responsible for any award rendered

### **AWARD**

I have considered the entire record including Claimant's Statement of Claim with all attachments, Respondent's Answer To Statement Of Claim And Motion To Dismiss with Exhibits 1-4, Claimant's Response To Statement Of Claim And Motion To Dismiss, and Claimant's wife's letter.

Respondent TD Waterhouse's Motion To Dismiss the case as to Respondent's Otlowski and Alpert is granted. Respondent, TD Waterhouse is solely responsible for the award.

I conclude fully and finally that Claimant is entitled to compensatory damages of \$652.

I conclude fully and finally that Claimant is not entitled to punitive damages.

I conclude fully and finally that Respondent's request for expungement is denied.

I conclude fully and finally that Claimant is responsible for payment of the filing fee.

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Edward Houry  
Public Arbitrator

Date