

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Thomas Di Giammatteo, Claimant and Counter-Respondent v. Waterhouse Securities, Inc.,
Respondent and Counter-Claimant

Case Number: 99-02993

Hearing Site: Los Angeles, California

REPRESENTATION OF PARTIES

For Claimant:

William W. Bloch, Esq.
William Bloch & Associates LLP
Beverly Hills, California

For Respondent:

Cameron Stout, Esq.
Keesal, Young & Logan
San Francisco, California

CASE INFORMATION

Statement of Claim filed: June 25, 1999

Claimant's Uniform Submission Agreement signed: June 25, 1999

Statement of Answer and Counter-Claim filed by Respondent: September 24, 1999

Respondent Waterhouse Securities, Inc.'s Uniform Submission Agreement signed: September 27, 1999

Statement of Answer to Counter-Claim filed by Claimant: September 28, 1999.

CASE SUMMARY

Claimant alleged negligence, negligent misrepresentation, breach of fiduciary duty, and breach of contract in connection with the margined purchase of shares of "eToys" during its initial public offering.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim. Respondent, in its Counter-Claim, alleged that Claimant breached an oral contract to repay a debit balance in his margin account.

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

RELIEF REQUESTED

Claimant requested compensatory damages and interest in the sum of \$317,000.00, costs and attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety. In its Counter-Claim, Respondent requested compensatory damages in the sum of \$51,074.15, interest, and costs.

Claimant requested dismissal of the Respondent's Counter-Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

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 Claim is denied in its entirety.
- 2) Counter-Respondent Thomas Di Giammatteo is liable to and shall pay Counter-Claimant Waterhouse Securities, Inc., \$51,074.15 in compensatory damages.
- 3) Counter-Respondent Thomas Di Giammatteo is liable to and shall pay Counter-Claimant Waterhouse Securities, Inc., \$8,512.36 in interest.
- 4) Each party shall bear its own costs, including attorney's fees.
- 5) The award covers any loss with respect to Claimant's purchase of 10,000 shares of eToys (ETYS) on May 20, 1999.
- 6) The Panel finds that the misstatements of T.D. Waterhouse employees were not relevant to the determination of this award. However, the Panel does recommend that Respondent improve its training in communication skills of its employees in providing complete and accurate information to its clients.
- 7) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
Respondent Waterhouse Securities, Inc.'s Counter-Claim	= \$ 1,000.00

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 which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Waterhouse Securities, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
Total Member Fees	= \$ 4,600.00

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 Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: April 26, 2000 1 session	
(10) Hearing sessions @ \$1,125.00/session	= \$ 11,250.00
Hearings: January 22, 2001 2 sessions	
January 23, 2001 2 sessions	
January 24, 2001 2 sessions	
January 25, 2001 2 sessions	
January 26, 2001 2 sessions	
Total Forum Fees	= \$ 12,375.00

1. The Panel assessed \$ 12,375.00 of the forum fees to Respondent Waterhouse Securities, Inc.

Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services provided. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and other requests.

Respondent Waterhouse Securities, Inc. requested additional copies of awards:	= \$ 70.00
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Respondent Waterhouse Securities, Inc.
requested photocopies: =\$ 5.50

Claimant Thomas Di Giammatteo
requested photocopies: =\$ 6.00

Fee Summary

1. Claimant, Thomas Di Giammatteo, is charged with the following fees and costs:

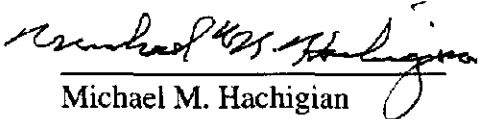
Initial Filing Fee	= \$ 300.00
<u>Administrative Costs</u>	= \$ 6.00
Total Fees	= \$ 306.00
<u>Less Payments</u>	= \$(1,425.00)
Refund Due Claimant	= \$(1,119.00)

2. Respondent, Waterhouse Securities, Inc., is charged with the following fees and costs:

Counter-Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,600.00
Forum Fees	= \$12,375.00
<u>Administrative Costs</u>	= \$ 75.50
Total Fees	= \$18,050.50
<u>Less Payments</u>	= \$(6,420.00)
Balance Due NASD Dispute Resolution, Inc.	= \$11,630.50

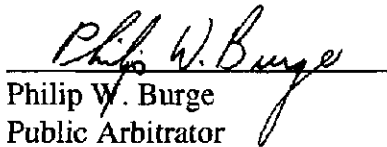
All balances are payable to NASD Dispute Resolution, Inc. and are to be paid immediately upon the receipt of the award by the parties pursuant to Rule 10330(g) of the Code.

Concurring Arbitrators' Signatures



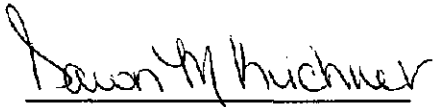
Michael M. Hachigian
Chair, Public Arbitrator

1-26-01
Signature Date



Philip W. Burge
Public Arbitrator

1-26-01
Signature Date



Dawn M. Kirchner, CFP
Non-Public Arbitrator

26 Jan 2001
Signature Date

January 29, 2001
Date of Service