

C A N A D A

PROVINCE OF QUEBEC
DISTRICT OF MONTREAL

SUPERIOR COURT
(Class Actions)

NO: 500-06-001125-216

ELI ELKOUBI,

Applicant

-vs-

TD WATERHOUSE CANADA INC., legal person having its head office at 66 Wellington Street West, 15th Floor, Toronto, Province of Ontario, M5K 1A2

Defendant

**APPLICATION TO AUTHORIZE THE BRINGING OF A CLASS ACTION AND TO
APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)**

**TO ONE OF THE HONOURABLE JUDGES OF THE SUPERIOR COURT, SITTING IN
AND FOR THE DISTRICT OF MONTREAL, YOUR APPLICANT STATES:**

1. The Applicant seeks authorization to institute a class action on behalf of the following class of which she is a member, namely:

Class:

All persons who had a TD Waterhouse brokerage account and who were restricted by TD Waterhouse from purchasing or selling securities.

(hereinafter referred to as the “**Class**”)

or any other Class to be determined by the Court;

2. All Class Members have a contract with TD Waterhouse Canada Inc. (hereinafter “**TD Waterhouse**”);
3. A copy of the *TD Waterhouse Canada Inc. Account and Services Agreements and Disclosure Documents* is communicated herewith as **Exhibit P-1**;

4. The extract of the enterprise information statement from the Quebec enterprise register for TD Waterhouse is communicated herewith as **Exhibit P-2**;
5. On or around January 28, 2021, TD Waterhouse restricted the ability of Class Members to sell certain securities;
6. For instance, TD Waterhouse admitted publicly to the following, as it appears from the CBC news article dated January 28, 2021, titled "*GameStop shares sell off after Robinhood, TD and other brokerages move to limit trading*", communicated as **Exhibit P-3**:

And **TD Bank** confirmed to CBC News that it, too, had **moved to limit trading in certain securities**.

A spokesperson said the bank has "put into place precautionary **measures to restrict short selling and options trading for some securities** like several brokerages and trading platforms across North America have done."

7. The reason people invest in the stock market is to make money and if they knew that TD Waterhouse would restrict their ability to sell securities, they would have never contracted with TD Waterhouse;
8. Other brokerage services and dealers did not impose the same restrictions as TD Waterhouse did;
9. As such, the consent given by Class Members when contracting with TD Waterhouse was vitiated by error relating to an essential element of the contract;
10. By failing to provide Class Members with a brokerage platform where they can sell securities as was promised, TD Waterhouse deceived Class members and, as such, their consent at the time they agreed to contract with TD Waterhouse was vitiated;
11. The Class Members therefore have the right to claim damages collectively pursuant to article 1407 C.C.Q (i.e. had Class Members known that there would be restrictions on selling securities they would have never contracted with TD Waterhouse, or, alternatively, would contracted with other brokerage services who did not place any restrictions and who played by the rules, such as BMO Investorline and Laurentian Bank Discount Brokerage, to name a few);

I. CONDITIONS REQUIRED TO AUTHORIZE THIS CLASS ACTION AND TO APPOINT THE STATUS OF REPRESENTATIVE PLAINTIFF (SECTION 575 C.C.P.):

A) THE FACTS ALLEGED APPEAR TO JUSTIFY THE CONCLUSIONS SOUGHT:

12. The Applicant has a TD Waterhouse brokerage account;
13. The Applicant uses his TD Waterhouse brokerage account to purchase securities in the stock market and TD Waterhouse charges a commission for its services;
14. On January 28, 2021, the Applicant wanted to purchase shares of GME with his TD Waterhouse brokerage account, but could not because of the restrictions placed by TD Waterhouse;
15. In fact, TD Waterhouse restricted the Applicant from buying or selling shares of a number of securities, without any legal reason;
16. Other Canadian brokerage services did not place any buying or selling restrictions on their brokerage platforms and TD Waterhouse appears to be the only one to have done so;
17. TD Waterhouse had no legal or contractual right to place such restrictions and its conduct constitutes bad faith under the Civil Code of Quebec;
18. The reason that the Applicant contracted with TD Waterhouse is so that he can buy and sell securities on a reliable and fair platform, with the objective of making money;
19. TD Waterhouse cannot unilaterally change the rules of the game, and this to the detriment of the Applicant and Class Members;
20. TD Waterhouse has already admitted to restricting trades on its platform (Exhibit P-3);
21. Had the Applicant been aware that TD Waterhouse would put such buying and selling restrictions in place, he would have never used its brokerage services;
22. TD Waterhouse's conduct caused a financial loss to the Applicant which he wishes to claim on his behalf and on behalf of all Class Members;

Remedies Sought:

Arts. 1399, 1400 and 1407 C.C.Q.

23. Given that his consent was vitiated due to error relating to an essential element of the contract (i.e. TD Waterhouse unilaterally deciding to impose restrictions), the Applicant claims damages pursuant to articles 6, 7, 1305, 1399, 1400 and 1407 C.C.Q.;

B) THE CLAIMS OF THE MEMBERS OF THE CLASS RAISE IDENTICAL, SIMILAR OR RELATED ISSUES OF LAW OR FACT:

24. The recourses of the Class Members raise identical, similar or related questions of fact or law, namely:
 - a) Did TD Waterhouse restrict the purchase or sale of securities on its platform?
 - b) If so, does this conduct constitute a civil fault?
 - c) Did TD Waterhouse act in bad faith?
 - d) Are the Class Members entitled to claim damages and in what amount?
25. All Class members are in the same position as the Applicant vis-à-vis the Defendant;
26. The Applicant's and Class Members' damages are a direct and proximate result of TD Waterhouse's conduct;

C) THE COMPOSITION OF THE CLASS

27. The composition of the Class makes it difficult or impracticable to apply the rules for mandates to take part in judicial proceedings on behalf of others or for consolidation of proceedings;
28. The Applicant conservatively estimates the number of persons included in the Class in the tens of thousands;
29. TD Waterhouse is one of the largest brokerage services in Canada;
30. The CBC article filed as Exhibit P-3 confirms that TD Waterhouse's restrictions were system-wide and affected all Class Members;
31. The names and addresses of all persons included in the Class are not known to the Applicant, however, are all in the possession of the Defendant since they must provide their information before purchasing securities on TD Waterhouse;
32. Class members are very numerous and are dispersed across the province and Canada;
33. These facts demonstrate that it would be impractical, if not impossible, to contact each and every Class member to obtain mandates and to join them in one action;
34. In these circumstances, a class action is the only appropriate procedure for all of the members of the Class to effectively pursue their respective rights and have access to justice without overburdening the court system;

D) THE CLASS MEMBER REQUESTING TO BE APPOINTED AS REPRESENTATIVE PLAINTIFF IS IN A POSITION TO PROPERLY REPRESENT THE CLASS MEMBERS

35. The Applicant requests that he be appointed the status of representative plaintiff for the following main reasons:
- a) He is a member of the Class and has a personal interest in seeking the conclusions that he proposes herein;
 - b) He is competent, in that he has the potential to be the mandatary of the action if it had proceeded under article 91 of the *Code of Civil Procedure*;
 - c) His interests are not antagonistic to those of other Class members;
36. Additionally, the Applicant respectfully adds that:
- a) He mandated his attorneys to file the present application for the sole purpose of having his rights, as well as the rights of other Class Members, recognized and protected so that they may be compensated for the damages that they have suffered as a consequence of TD Waterhouse's conduct and so that the TD Waterhouse can be held accountable;
 - b) He has the time, energy, will and determination to assume all the responsibilities incumbent upon him in order to diligently carry out the action;
 - c) He cooperates and will continue to fully cooperate with her attorneys, who have experience in class actions;
 - d) He understands the nature of the action;

II. DAMAGES

37. TD Waterhouse's conduct has caused financial damages to its customers;
38. In light of the foregoing, the following damages may be claimed against the TD Waterhouse:
- a) Damages pursuant to articles 6, 7, 1305, 1399, 1400, and 1407 C.C.Q., in an amount to be determined;

III. NATURE OF THE ACTION AND CONCLUSIONS SOUGHT

39. The action that the Applicant wishes to institute on behalf of the members of the Class is an action in damages;
40. The conclusions that the Applicant wishes to introduce by way of an originating application are:

ALLOW the class action of the Representative Plaintiff and the members of the Class against the Defendant;

CONDEMN the Defendant to pay the Class Members an amount in damages to be determined and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

IV. JURISDICTION

41. The Applicant requests that this class action be exercised before the Superior Court of the province of Quebec, in the district of Montreal, because the Applicant and many Class Members reside in Montreal;

FOR THESE REASONS, MAY IT PLEASE THE COURT:

AUTHORIZE the bringing of a class action in the form of an originating application in damages;

APPOINT the Applicant the status of Representative Plaintiff of the persons included in the Class herein described as:

Class:

All persons who had a TD Waterhouse brokerage account and who were restricted by TD Waterhouse from purchasing or selling securities.

or any other Class to be determined by the Court;

IDENTIFY the principle questions of fact and law to be treated collectively as the following:

- a) Did TD Waterhouse restrict the purchase or sale of securities on its platform?
- b) If so, does this conduct constitute a civil fault?
- c) Did TD Waterhouse act in bad faith?
- d) Are the Class Members entitled to claim damages and in what amount?

IDENTIFY the conclusions sought by the class action to be instituted as being the following:

ALLOW the class action of the Representative Plaintiff and the members of the Class against the Defendant;

CONDEMN the Defendant to pay the Class Members an amount in damages to be determined and **ORDER** that this condemnation be subject to collective recovery;

CONDEMN the Defendant to pay interest and the additional indemnity on the above sums according to law from the date of service of the Application to authorize a class action and **ORDER** that this condemnation be subject to collective recovery;

ORDER the Defendant to deposit in the office of this Court the totality of the sums which forms part of the collective recovery, with interest and costs;

ORDER that the claims of individual Class members be the object of collective liquidation if the proof permits and alternately, by individual liquidation;

CONDEMN the Defendant to bear the costs of the present action including the cost of exhibits, notices, the cost of management of claims and the costs of experts, if any, including the costs of experts required to establish the amount of the collective recovery orders;

DECLARE that all members of the Class that have not requested their exclusion, be bound by any judgement to be rendered on the class action to be instituted in the manner provided for by the law;

FIX the delay of exclusion at thirty (30) days from the date of the publication of the notice to the members, date upon which the members of the Class that have not exercised their means of exclusion will be bound by any judgement to be rendered herein;

ORDER the publication of a notice to the members of the Class in accordance

with article 579 C.C.P. within sixty (60) days from the judgement to be rendered herein in the “News” sections of the Saturday editions of La Presse, the Journal de Montréal and the Montreal Gazette;

ORDER that said notice be published on the Defendant’s website, Facebook page and Twitter account, in a conspicuous place, with a link stating “Notice of a Class Action”;

ORDER the Defendant to send an Abbreviated Notice by e-mail to each Class Member, to their last known e-mail address, with the subject line “Notice of a Class Action”;

RENDER any other order that this Honourable Court shall determine;

THE WHOLE with costs including publication fees.

Montreal, January 29, 2021

Montreal, January 29, 2021

(s) Renno Vathilakis Inc.

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SUMMONS
(ARTICLES 145 AND FOLLOWING C.C.P)

Filing of a judicial application

Take notice that the Applicant has filed this Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff in the office of the **Superior Court** in the judicial district of **Montreal**.

Defendant's answer

You must answer the application in writing, personally or through a lawyer, at the courthouse of Montreal situated at 1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6, within 15 days of service of the Application or, if you have no domicile, residence or establishment in Québec, within 30 days. The answer must be notified to the Applicant's lawyer or, if the Applicant is not represented, to the Applicant.

Failure to answer

If you fail to answer within the time limit of 15 or 30 days, as applicable, a default judgement may be rendered against you without further notice and you may, according to the circumstances, be required to pay the legal costs.

Content of answer

In your answer, you must state your intention to:

- negotiate a settlement;
- propose mediation to resolve the dispute;
- defend the application and, in the cases required by the Code, cooperate with the Applicant in preparing the case protocol that is to govern the conduct of the proceeding. The protocol must be filed with the court office in the district specified above within 45 days after service of the summons or, in family matters or if you have no domicile, residence or establishment in Québec, within 3 months after service;
- propose a settlement conference.

The answer to the summons must include your contact information and, if you are represented by a lawyer, the lawyer's name and contact information.

Change of judicial district

You may ask the court to refer the originating Application to the district of your domicile or residence, or of your elected domicile or the district designated by an agreement with the plaintiff.

If the application pertains to an employment contract, consumer contract or insurance contract, or to the exercise of a hypothecary right on an immovable serving as your main residence, and if you are the employee, consumer, insured person, beneficiary of the insurance contract or hypothecary debtor, you may ask for a referral to the district of your domicile or residence or the district where the immovable is situated or the loss occurred. The request must be filed with the special clerk of the district of territorial jurisdiction after it has been notified to the other parties and to the office of the court already seized of the originating application.

Transfer of application to Small Claims Division

If you qualify to act as a plaintiff under the rules governing the recovery of small claims, you may also contact the clerk of the court to request that the application be processed according to those rules. If you make this request, the plaintiff's legal costs will not exceed those prescribed for the recovery of small claims.

Calling to a case management conference

Within 20 days after the case protocol mentioned above is filed, the court may call you to a case management conference to ensure the orderly progress of the proceeding. Failing this, the protocol is presumed to be accepted.

Exhibits supporting the application

In support of the Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff, the Applicant intends to use the following exhibits:

- Exhibit P-1:** Copy of the TD Waterhouse Canada Inc. Account and Services Agreements and Disclosure Documents;
- Exhibit P-2:** Extract of the enterprise information statement from the Quebec enterprise register for TD Waterhouse;
- Exhibit P-3:** CBC news article dated January 28, 2021 titled "*GameStop shares sell off after Robinhood, TD and other brokerages move to limit trading*";

These exhibits are available on request.

Notice of presentation of an application

If the application is an application in the course of a proceeding or an application under Book III, V, excepting an application in family matters mentioned in article 409, or VI of the Code, the establishment of a case protocol is not required; however, the application must be accompanied by a notice stating the date and time it is to be presented.

Montreal, January 29, 2021

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(s) Renno Vathilakis Inc.

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NOTICE OF PRESENTATION
(articles 146 and 574 al. 2 N.C.P.C.)

TO: TD WATERHOUSE CANADA INC.
66 Wellington Street West, 15th Floor
Toronto, Ontario, M5K 1A2

Defendant

TAKE NOTICE that Applicant's *Application for Authorization to Institute a Class Action and to Appoint the Status of Representative Plaintiff* will be presented before the Superior Court at **1 Rue Notre-Dame E, Montréal, Quebec, H2Y 1B6**, on the date set by the coordinator of the Class Action chamber.

GOVERN YOURSELVES ACCORDINGLY.

Montreal, January 29, 2021

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Applicant

-vs.-

TD WATERHOUSE CANADA INC.

Defendant

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A CLASS ACTION AND TO APPOINT THE STATUS
OF REPRESENTATIVE PLAINTIFF
(ARTICLES 571 AND FOLLOWING C.C.P.)**

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