

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Daniel O'Brien, as Trustee for his Self-Employed Pension Plan and the O'Brien D.D.S., P.S., Profit-Sharing Plan, and Todd Krekow, Claimants v. Dain Rauscher, Incorporated and Wayne Josephson, Nelson Civello and Linda Henderson, Respondents.

Case Number: 00-03031

Hearing Site: Seattle, WA

I. REPRESENTATION OF PARTIES

For Claimants:

John A. Bender, Jr., Esq.
Holland & Knight, LLP
2600 Pike Tower
520 Pike Street
Seattle, WA 98101

For Respondents:

Curt Roy Hineline, Esq.
Dorsey & Whitney, LLP
U.S. Bank Centre
1420 Fifth Avenue
Suite 3400
Seattle, WA 98101

II. CASE INFORMATION/PROCEDURAL HISTORY

Claimants Daniel O'Brien, as Trustee for his Self-Employed Pension Plan and the O'Brien D.D.S., P.S., Profit-Sharing Plan, and Todd Krekow sought arbitration of their claims against Respondents through NASD Dispute Resolution pursuant to their customer agreements with Respondent Dain Rauscher Securities, Inc. ("Dain Rauscher").

Claimants commenced this arbitration on July 18, 2000 by filing, through counsel (John A. Bender, Jr., of Weiss Jensen Ellis & Howard, now Holland & Knight LLP, Seattle WA), an arbitration claim dated July 11, 2000. Claimants thereafter filed submission agreements dated July 20, 2000 (Respondent O'Brien on behalf of the Self-Employed Pension Plan and the O'Brien D.D.S., P.S., Profit Sharing) and July 14, 2000 (Respondent Todd Krekow).

With permission of the Arbitrators, Claimants filed a first amended arbitration claim on April 4, 2001, dated March 30, 2001, and a second amended arbitration claim dated September 17, 2001.

Thereafter, Respondents Dain Rauscher and Wayne Josephson were served and filed submission agreements dated August 29, 2000. Curt Roy Hine of Dorsey & Whitney LLP, Seattle WA, appeared for said Respondents.

Thereafter, on October 30, 2000, Respondents Dain Rauscher and Wayne Josephson filed a response and affirmative defenses to Claimants' arbitration claim dated October 26, 2000. A supplemental response and affirmative defenses was also filed on April 20, 2001.

III. CASE SUMMARY

Claimants alleged that Respondents misrepresented and/or omitted to disclose the true financial condition of Boston Chicken, Inc. ("Boston Chicken") stocks and bonds, namely, to disclose the true indebtedness of the company.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim. Additionally, Respondents asserted several affirmative defenses, including that the claims were barred as a matter of law because they were not based on an offering prospectus; the claims were barred by the applicable statute of limitations; Respondents accurately disclosed the debt and interest expense ratio of the bonds; Claimants failed to mitigate their alleged losses; the alleged damages were the result of Claimants' actions; assumption of the risk; failure to state a claim; and that the demand for rescission and/or damages was barred by the principles of waiver, estoppel, ratification and laches.

In their Amended Statement of Claim, Claimants asserted an additional claim to recover equitable relief as permitted by ERISA, 29 U.S.C. Section 1100 et seq. on the grounds that the Respondents breached their fiduciary duty. Specifically, Claimants alleged that Respondents Dain Rauscher and Wayne Josephson violated the provisions of the Washington Securities Act, RCW Chapter 21.20, by failing to disclose material information concerning certain Boston Chicken securities purchased by Claimants from Dain Rauscher, that Respondents were additionally liable to them under common law theories of negligent misrepresentation, and that Respondents were additionally liable to Claimant O'Brien under ERISA for breaching their fiduciary duty to render prudent advice and refrain from deliberately misleading him.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Amended Statement of Claim. Respondents alleged an additional affirmative defense that Claimants were co-fiduciaries and were therefore equally liable for damages

under the ERISA statute.

IV. RELIEF REQUESTED

Claimant Daniel O'Brien, as Trustee for the Self-Employed Pension Plan and the O'Brien D.D.S., P.S., Profit Sharing Plan, requested, at the hearing, \$96,222.75, the initial investment in the Boston Chicken stocks and bonds; 8% interest as provided by law; rescission of the transactions; attorney's fees as permitted by the ERISA statute and Washington state securities; and all other relief that the Panel deemed just and equitable.

Claimant Todd Krekow requested, at the hearing \$10,713.50, the initial investment in the Boston Chicken bonds; 8% interest as provided by law; and attorney fees under Washington state securities laws.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

V. OTHER ISSUES CONSIDERED AND DECIDED

A preliminary hearing was held in this matter by telephone conference call on March 22, 2001 to discuss various procedural matters incident to this arbitration, including the scheduling of the arbitration hearing. At a further preliminary hearing by telephone conference call on September 14, 2001, the scheduled dates for the arbitration hearing (September 19-21, 2001) were stricken upon request of Respondents, Respondents having made a satisfactory showing that the tragic events of September 11, 2001 made a postponement of the hearing necessary; Claimants requested, and were given, leave to amend their claims to include a claim for damages caused them by the last-minute postponement of the hearing. A further preliminary hearing was held, also by telephone conference call, on September 19, 2001, at which time this matter was rescheduled for hearing on December 10-14, 2001. All parties were duly and properly notified of the re-scheduled dates for the arbitration hearing.

In or about September 2001, and prior to the arbitration hearing, Claimants voluntarily dismissed Mr. Nelson Civello and Ms. Linda Henderson, originally named as Respondents in this matter.

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

VI. THE ARBITRATION HEARING

The Chair of the Panel convened the arbitration hearing at 9:00 am on December 10, 2001 at the Seattle Regional Office of NASD Regulation, Inc., Two Union Square,

Seattle WA. All three members of the Panel, namely Panel Chair Philip E. Cutler, and Arbitrators William J. Chambers and Paul D. Hansen, were present in person. With respect to the parties:

- Claimants Daniel O'Brien and Todd Krekow appeared in person and through their counsel, John A. Bender, Jr., of Holland & Knight LLP, Seattle WA.
- Respondents Dain Rauscher and Wayne Josephson appeared through their counsel, Curt Roy Hine of Dorsey & Whitney LLP, Seattle WA. In addition, Dain Rauscher appeared through Kevin Vidato and Richard Pruner, Dain Rauscher's Seattle branch manager. Respondent Wayne Josephson also appeared in person.

With the permission of the Panel, the following persons, all beneficiaries under the Daniel O'Brien, D.D.S., P.S. Profit-Sharing Plan, attended the hearing in person:

- Vicki Lynn Johnson, Linda Kay Horn, Susan Earlene Simons, and Michelle Lee Harris. With permission of the Panel, Mrs. O'Brien and John Krasznickewicz, Respondents' expert witness, attended portions of the Hearing in person.

The following witnesses testified at the hearing on behalf of the party indicated. In all cases the witness was cross-examined by the opposing party.

- | | |
|-----------------------|---------------------------|
| • Wayne Josephson | Claimants and Respondents |
| • Lawrence Keating | Claimants |
| • John Krasznickewicz | Respondents |
| • Todd Krekow | Claimants |
| • Daniel O'Brien | Claimants |
| • Richard Pruner | Claimants |
| • Allen Stover | Claimants |

Mr. Stover was accompanied by his personal legal counsel, Edward Pettigrew of Graham & Dunn PC, Seattle WA.

In addition to admitting into evidence the exhibits described on the attached lists, all of which were admitted by agreement of the parties, Arbitrators' Exhibit 1, consisting of the following documents, was admitted:

- The submission agreements executed by Claimant Daniel O'Brien individually and as trustee of his Self-Employed Pension Plan and the O'Brien D.D.S., P.S., Profit Sharing Plan, and by Claimant Todd Krekow.

- The submission agreements executed by Respondents Dain Rauscher and Wayne Josephson.
- Claimants' arbitration claim dated July 11, 2000.
- Claimants' first amended arbitration claim dated March 30, 2001.
- Claimants' second amended arbitration claim dated September 17, 2001.
- Respondents' response and affirmative defenses dated October 26, 2000.
- Respondents' supplemental response and affirmative defenses dated April 16, 2001.

At the conclusion of Claimants' case, Respondents moved to dismiss (1) all of Claimants' claims against Respondent Wayne Josephson; (2) Claimant O'Brien's ERISA claims; and (3) certain other of Claimants' claims. After hearing argument, the Panel denied Respondents' motion.

The hearing was concluded, and the Chair of the Panel declared the hearing closed (subject to the provisions of the following two paragraphs), with respect to the receipt of evidence and proofs on the merits of the parties' claims, at approximately 12:20 pm on December 14, 2001.

The parties were invited to submit supplemental briefs (responding to arguments made in the opposing party's initial arbitration brief) no later than December 19, 2001. Each party submitted a supplemental brief.

Claimants' application for attorneys' fees was filed with the Panel on the last day of hearing, December 14, 2001. On December 17, 2001, the Panel established by Order a briefing schedule for matters related to the award of attorneys' fees. In response, (1) Respondents timely served their application for attorneys' fees in the event the Panel dismissed Claimants' ERISA claims and (2) Claimants timely served their objections to the Respondents' application for attorneys' fees. Respondents' opposition to Claimants' attorneys' fee application was contained in their arbitration briefing and at oral argument.

VII. AWARD

After considering the pleadings, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel, having been designated in accordance with

the NASD Code of Arbitration Procedure ("NASD Code") and the submission agreements entered into by the above-named parties, and, having been duly sworn and having duly heard the proofs and allegations of the parties, decided in full and final resolution of the issues submitted for determination as follows:

A. Summary of Decision on Substantive Claims

Claimants' claims arise out of their purchase, in the fall of 1997, either through an IRA or SEP or as trustee of a profit-sharing plan, of high-yield Boston Chicken bonds and, in Dr. O'Brien's case, Boston Chicken stock as well, from Respondent Dain Rauscher. The bonds in question, 4.5% convertible bonds due 2004, were analyzed by one of Dain Rauscher's bond analysts, Respondent Wayne Josephson, who prepared a written analysis and recommended them "for investors with aggressive risk appetites."

Over the course of several months following their purchases, Boston Chicken made a number of disclosures, to which both the market and the principal bond-rating firms reacted negatively. In the fall of 1998 Boston Chicken sought bankruptcy court protection under Chapter 11 of the Bankruptcy Act. Both the bonds and the stock are now essentially worthless.

Claimants' claim that Dain Rauscher and Mr. Josephson¹ are liable to them under the Washington Securities Act, RCW Chapter 21.20, and under common law negligent misrepresentation for failing to disclose material facts and information about the securities. Additionally, Dr. O'Brien claims that Dain Rauscher and Mr. Josephson are liable to him under the federal Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. Section 1100 *et seq.*, for breaching their fiduciary duty to render prudent advice and refrain from deliberately misleading him.

For the reasons which follow, we (1) deny and dismiss with prejudice the statutory and common law securities claims of both Claimants against Mr. Josephson; (2) award damages to each Claimant under their statutory and common law securities claims, but against Respondent Dain Rauscher only; and (3) deny and dismiss with prejudice all of Dr. O'Brien's ERISA claims.

¹ As indicated above, this case proceeded to hearing against Dain Rauscher and Mr. Josephson only. Prior to the hearing, Claimants voluntarily dismissed their claims against respondents Linda Henderson and Nelson Civello.

1. Discussion – Substantive Claims

For several years prior to 1997, Claimants Daniel O'Brien, D.D.S.² and Todd Krekow D.D.S. were active investors and maintained brokerage accounts with Dain Rauscher or its predecessor firm, using Allen Stover as their broker. Dr. O'Brien and Dr. Krekow were friends as well as professional colleagues; Dr. Krekow introduced Dr. O'Brien to Mr. Stover. While Mr. Stover would independently bring investment opportunities to the attention of Drs. O'Brien and Krekow on occasion, both Dr. O'Brien and Krekow made various substantial investments, many of them quite speculative, other than through the recommendations of Mr. Stover, using outside sources, such as investment newsletters and periodicals, as the basis for most of their investment decisions. Each of them tended to use Mr. Stover for his access to the market and as a source of information, and Dain Rauscher for organization and record-keeping services.³

In July 1997, one of Dain Rauscher's bond analysts, Wayne Josephson, prepared an analysis of Boston Chicken bonds. Mr. Josephson's written report recommended the purchase of Boston Chicken bonds as "appropriate for investors with aggressive risk appetites." (Claimants' Exhibit 42) In September 1997, Mr. Stover brought to Claimants' attention the fact that Mr. Josephson and Dain Rauscher were recommending the purchase of Boston Chicken bonds and recommended to each Claimant that they consider purchasing a quantity of bonds. While Mr. Josephson's July 1997 report was up-beat and positive overall, it was nonetheless factual and his analysis, based on information available to him, supportable. His report also disclosed a number of negatives that any reasonable investor would want to be aware of prior to purchasing Boston Chicken bonds. Among these were the B2 and B-minus ratings by Moody's and Standard & Poor's, Mr. Josephson's evaluation of the relative risk of the bonds as "aggressive" and his opinion that the bonds were "appropriate for investors with aggressive risk appetites." Although Mr. Stover claims to have used Mr. Josephson's report as a template for his oral discussions with Drs. O'Brien and Krekow, he neither furnished Claimants with a copy of Mr. Josephson's report nor sufficiently advised them of the risks inherent in purchasing either high-yield bonds generally or the Boston Chicken bonds in particular. There was insufficient credible evidence to overcome Claimants' testimony that Mr. Stover brought neither the "aggressive risk" nature of the Boston Chicken bonds or the

² Dr. O'Brien brought his claims individually, on behalf of his self-employed pension plan and as trustee of the O'Brien D.D.D, P.S. profit-sharing plan.

³ Dr. O'Brien did not meet his burden of proof on his ERISA claim that Mr. Stover or Dain Rauscher had a fiduciary relationship either with him or with his SEP or his firm's profit-sharing plan. We therefore deny and dismiss with prejudice Dr. O'Brien's ERISA claims against Respondent Dain Rauscher.

Moody's or Standard & Poor's ratings of the bonds to their attention prior to their purchase of the bonds.

On the basis of Mr. Stover's recommendation,⁴ in September 1997, Claimants purchased, either as individuals or as trustee of a SEP or profit-sharing plan, Boston Chicken bonds. Almost immediately, the market price of the bonds began to fall. In late October 1997, Mr. Josephson became aware of certain developments in Boston Chicken's business and operations that could have a negative effect on the value of its bonds. He reported on these developments in two supplemental reports (Claimants' Exhibits 47 and 50), neither of which did Mr. Stover furnish to or discuss with Claimants. Claimants had a reasonable expectation that Mr. Stover would share with them any follow-on reports by Mr. Josephson.

Later, in November 1997, Dr. O'Brien purchased Boston Chicken stock. Although Respondents claim that Dr. O'Brien's purchase of Boston Chicken stock was "unsolicited," the evidence supports a finding that Dr. O'Brien would not have purchased the stock but for Mr. Stover's initial recommendation on the bonds, at which time Mr. Stover failed to adequately communicate the risks of investing in Boston Chicken.

While we find from the evidence that Mr. Stover failed to sufficiently disclose to Claimants the risks inherent in their purchase of Boston Chicken securities (stocks or bonds), the Claimants here bear some responsibility for their investment decisions, both at the time of purchase and during the course of events thereafter. Despite their claims of investment naiveté and aversion to investment risk in their Dain Rauscher accounts, the evidence reveals that both Dr. Krekow and Dr. O'Brien (1) invested in a variety of securities with significant risk factors, ranging from business risk to political risk to risk of currency fluctuation; (2) made significant investment decisions on their own; and (3) failed to ask the sort of questions an investor with their professional background, level of intelligence and investment experience would be expected to ask.

Moreover, the evidence is clear that – whatever Claimants' initial understanding of the risks – by early in the first quarter of 1998, and no later than the end of January, their Boston Chicken investment carried a significantly different risk than at the time

⁴ Mr. Josephson had no contact with Dr. O'Brien or Dr. Krekow at any time. His sole relationship to the Claimants is as author of the Dain Rauscher bond report which, as we have noted, contained a number of caveats that he reasonably expected brokers such as Mr. Stover would bring to the attention of investors such as Claimants, but which Mr. Stover did not do. Accordingly, we deny and dismiss with prejudice the statutory and common law securities claims of all Claimants against Mr. Josephson. We also reject as without merit Dr. O'Brien's claim that Mr. Josephson was a fiduciary under ERISA. Accordingly, we deny and dismiss with prejudice Dr. O'Brien's ERISA claims against Mr. Josephson as well.

of purchase. Dain Rauscher's statement illustrates the point. By December 31, 1997, the market price of their bonds had fallen \$28.50 (to \$48.75 from \$77.25) or nearly 37%. Although the price of the bonds bumped up to \$50 at the end of January 1998 and up an additional \$5.75 (to \$55.75) by the end of February, by the end of March the price had fallen precipitously (to \$39.75). The same is true, to a somewhat lesser extent, of Dr. O'Brien's Boston Chicken stock. By December 31, 1997, the stock had fallen a little over \$2/share (to \$6.438), for a loss in value of 24.3%. Unlike the bonds, which rose in value by the end of January, the stock price continued to fall (to \$6.125 by January 31, 1998). The stock price bumped up to \$6.938/share by February 29, and then dropped nearly \$2/share (to \$5.031) by March 31. Had Claimants sold their Boston Chicken bonds during this period, they would have recouped 51-72% of their investment; Dr. O'Brien would have recouped 59-81% of his investment in Boston Chicken stock.

We have thoughtfully considered Respondents' argument that, even if Claimants were misled at the time of purchase, once Claimants became aware of the significantly greater risk inherent in their investments, their decision to hold on to the securities was a separate decision and that, having chosen poorly, they cannot now recover damages. Under the circumstances of this case, however, we reject Respondent's argument. The law does not compel such a result. And, in any case, it is clear that even sophisticated and experienced investors could not reverse losses already suffered. All that can be asked of them at that point is to bear the responsibility of using common sense and prudence and to salvage what they could.

After considering all these factors in the context of each Claimant's situation, including their relative investment experience and healthy skepticism of most brokers' advice and the fact that Dr. O'Brien had a fiduciary obligation, as trustee of his firm's profit-sharing plan, to the beneficiaries, yet invested nearly \$30,000.00 of the beneficiaries' money in Boston Chicken securities and then did little to safeguard that investment, the evidence supports a finding that Claimants' gross investment losses (determined by deducting from their investment cost the February and August 1998 interest payments they received on their bond holdings and the proceeds Dr. O'Brien received on sale of his stock, which we find to be the most appropriate and equitable methodology under the circumstances presented) should be reduced by 75%, which we find to be the degree to which claimants were contributorily negligent.

Accordingly, using the account statements from Respondents' Exhibits 91 and 94 for "investment cost" and "interest paid" and the stock sale receipts from Respondents' Exhibit 90, we find that Claimants are entitled to recover damages as follows:

O'Brien Profit-Sharing Plan Account

(15 BOST bonds; 2100 shares BOST stock)

	<u>Bonds</u>	<u>Stock</u>
Investment cost	\$11699.75	\$18053.50
Less: interest paid (bonds), proceeds (stock)	\$675.00	\$1559.94
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Gross loss (by security)	\$11024.75	\$16493.56
Less: 75% contributory negligence	\$8268.56	\$12370.17
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Net damages (by security)	\$2756.19	\$4123.39
<i>Net total damages</i>		\$6879.58

O'Brien SEP Account

(50 BOST bonds; 3200 shares BOST stock)

	<u>Bonds</u>	<u>Stock</u>
Investment cost	\$38991.00	\$27478.50
Less: interest paid (bonds), proceeds (stock)	\$2250.00	\$2384.92
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Gross loss (by security)	\$36741.00	\$25093.58
Less: 75% contributory negligence	\$27555.75	\$18820.19
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Net damages (by security)	\$9185.25	\$6273.39
<i>Net total damages</i>		\$15458.64

Krekow IRA Account

(14 BOST bonds)

	<u>Bonds</u>	
Investment cost	\$10713.50	
Less: interest paid	\$630.00	

Gross loss	\$10083.50	
Less: 75% contributory negligence	\$7562.63	

<i>Net total damages</i>		\$2520.87

In summary, on the principal claims of the Claimants – those based on the Washington Securities Act and common law negligent misrepresentation – we find

the evidence reports a finding of liability against Dain Rauscher based on the actions and omissions of its agent, Allen Stover. Claimants have, however, failed to meet their burden of proving that Wayne Josephson is liable to them in any way under either of these theories; their claims against Mr. Josephson should be denied and dismissed with prejudice. Additionally, Dr. O'Brien failed to meet his burden of proving that either Wayne Josephson or Dain Rauscher is liable to him under ERISA, either individually or under his SEP or as trustee of his firm's profit-sharing plan; his ERISA claims should also be denied and dismissed with prejudice.

2. Discussion – Claimants' Claim for Delay of Hearing Damages

At the September 14, 2001 preliminary hearing, at which Respondents moved to continue the hearing from September 19-21, Claimants requested, and were given, leave to amend their claims to include a claim for damages caused them by delaying the hearing on such short notice: in reliance on September 19-21 hearing dates, Claimants had notified patients that they would be unable to schedule them for professional services on those dates in order to enable Claimants to attend the hearing in person. While we recognize that Claimants suffered some lost revenues as a result of the last minute continuance of the hearing – and sympathize with their financial plight – it would be inequitable to make any award against either Dain Rauscher or Mr. Josephson, notwithstanding that it was at their request that the hearing was continued. Neither Respondent was responsible in any way for the events that mandated a continuance. Rather, the tragic events of September 11, 2001 and the domestic air transportation nightmare that followed September 11 precipitated the need for a continuance. Therefore, these claims are denied and dismissed with prejudice.

3. Discussion – Attorneys' Fees and Expert Witness Costs

The Washington Securities Act, RCW Chapter 21.20, permits the award of reasonable attorneys' fees to a prevailing Claimant. While Claimants have prevailed here, their fee request must be critically examined using appropriate standards. *See, e.g.,* RPC 1.5(a)(1); *Bowers v. Transamerica Title Insurance Co.*, 100 Wn.2d 581, 675 P.2d 193 (1983). Having done so, we believe a reasonable attorneys' fee (including miscellaneous "costs") for Claimants is \$22,000.00. We did not find the testimony of Claimants' expert, Mr. Keating, to be of particular help in deciding this case and therefore award nothing for Claimants' expert fees.

While ERISA permits the award of attorneys' fees to a Respondent who prevails on an ERISA claim, it does not mandate an award in every case and we do not find an award of attorneys' fees to Respondents in this case would be appropriate. Moreover, Respondents made no effort to allocate the fees incurred to defense of Dr. O'Brien's

ERISA claims. Rather, Respondents simply advised us of the total attorneys' fees incurred in defense of all the claims of all Claimants (\$85,801) and attached nearly 90 pages of billing statements, apparently inviting us to make our own allocation, which, with no guidance from Respondents, we decline to do. For all these reasons we deny and dismiss with prejudice Respondents' claim for attorney's fees. While we found the testimony of Respondents' expert, Mr. Krasznegewiez, more helpful than that of Claimants' expert, Mr. Keating, very little of Mr. Krasznegewiez's testimony related to Dr. O'Brien's ERISA claims and Respondents made no effort to apportion their expert's fees. For these reasons, we also deny and dismiss with prejudice Respondents' request for expert fees for defense of Dr. O'Brien's ERISA claims.

B. Substantive Claims of the Parties

On the claims of Claimant Daniel O'Brien, under his self-employed pension plan, for negligent misrepresentation and violation of the Washington Securities Act, RCW Chapter 21.20, award in favor of Claimant O'Brien and against respondent Dain Rauscher, only, in the amount of US\$15,458.64. All such claims against Respondent Wayne Josephson are denied and dismissed with prejudice.

On the claims of Claimant Daniel O'Brien, as trustee of the O'Brien, D.D.S., P.S. Profit-Sharing Plan, for negligent misrepresentation and violation of the Washington Securities Act, RCW Chapter 21.20, award in favor of Claimant O'Brien and against respondent Dain Rauscher, only, in the amount of US\$6,879.58. All such claims against Respondent Wayne Josephson are denied and dismissed with prejudice.

On the claims of Claimant Daniel O'Brien for violation of ERISA, award in favor of Respondents Dain Rauscher and Wayne Josephson. All such claims are denied and dismissed with prejudice.

On the claims of Claimant Todd Krekow for negligent misrepresentation and violation of the Washington Securities Act, RCW Chapter 21.20, award in favor of Claimant Krekow and against respondent Dain Rauscher Securities, Inc., only, in the amount of US\$2,520.87. All such claims against Respondent Wayne Josephson are denied and dismissed with prejudice.

On the claims of Claimants for damages caused by delay of the hearing, we award in favor of Respondents. All such claims are denied and dismissed with prejudice.

C. Claims for Attorneys' Fees and Expert Witness Costs

On Claimants' claim for attorneys' fees and costs under the Washington Securities Act, RCW Chapter 21.20, award in favor of Claimants O'Brien and Krekow, jointly, and against Respondent Dain Rauscher Securities, Inc., only, a reasonable attorneys'

fee, including costs other than for expert witness fees, in the amount of US\$22,000.00. Claimants' claim for attorneys' fees against Respondent Wayne Josephson is denied and dismissed with prejudice. Claimants' claim for expert witness costs is also denied and dismissed with prejudice.

On Respondents' claim for attorneys' fees and costs under ERISA, award in favor of Claimant Daniel O'Brien. Respondents' claim is denied and dismissed with prejudice. Respondents' claim for expert witness costs is also denied and dismissed with prejudice.

D. Other Claims

All other claims and defenses of the parties, howsoever denominated and by whomever made, submitted to this arbitration are denied and dismissed with prejudice

VIII. 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
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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 Dain Rauscher, Incorporated, is a party and the following fees are assessed:

Member Surcharge	= \$1500
Pre-Hearing Process Fee	= \$ 600
<u>Hearing Process Fee</u>	<u>= \$2500</u>
Total Member Fees	= \$4600

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 Chair/Panel. The following fees are assessed:

Two (2) Pre-hearing conference sessions with the Panel @ 1125/session	= \$2250
March 22, 2001 1 session	
September 19, 2001 1 session	
One (1) Pre-hearing conference session with a single arbitrator @	= \$ 450

September 14, 2001 1 session

Nine (9) Hearing sessions @ \$1125/session = \$10,125

Hearings: December 10, 2001 2 sessions
December 11, 2001 2 sessions
December 12, 2001 2 sessions
December 13, 2001 2 sessions
December 14, 2001 1 session

Total Forum Fees = \$12,825

The Panel assessed \$12,825 of the forum fees to Respondent Dain Rauscher.

Fee Summary

1. Claimants are charged with the following fees and costs:

Initial Filing Fee	= \$ 300
<u>Forum Fees</u>	= \$ 0
Total Fees	= \$ 300
<u>Less Payments</u>	= \$(1425)
Refund to Claimants	= \$(1125)

2. Respondent, Dain Rauscher, Incorporated, is charged with the following fees and costs:

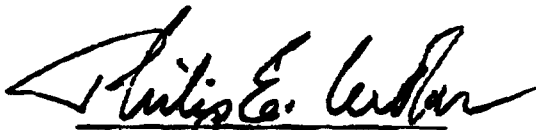
Member Fees	= \$4600
Forum Fees	= \$12,825
<u>Costs Incurred By Claimants</u>	= \$ 300
Total Fees	= \$17,725
<u>Less Payments</u>	= \$(4600)
Balance Due NASD Dispute Resolution, Inc.	= \$13,125

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

ARBITRATION PANEL

Philip E. Cutler, Esq.	-	Public Arbitrator, Presiding Chair
Paul D. Hansen, Esq.	-	Public Arbitrator
William J. Chambers	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Philip E. Cutler, Esq.
Chair, Public Arbitrator

01/18/02

Signature Date

Paul D. Hansen, Esq.
Public Arbitrator

Signature Date

William J. Chambers
Industry/Non-Public Arbitrator

Signature Date

Date Served:

JAN 24 2002

Date of Service

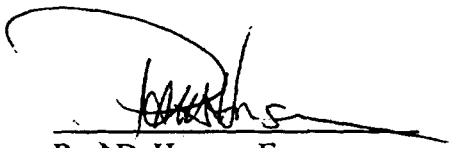
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Philip E. Cutler, Esq.	-	Public Arbitrator, Presiding Chair
Paul D. Hansen, Esq.	-	Public Arbitrator
William J. Chambers	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Philip E. Cutler, Esq.
Chair, Public Arbitrator

Signature Date



Paul D. Hansen, Esq.
Public Arbitrator



Signature Date

William J. Chambers
Industry/Non-Public Arbitrator

Signature Date

Date Served:

JAN 24 2002

Date of Service

ARBITRATION PANEL

Philip E. Cutler, Esq.	-	Public Arbitrator, Presiding Chair
Paul D. Hansen, Esq.	-	Public Arbitrator
William J. Chambers	-	Non-Public Arbitrator


Concurring Arbitrators' Signatures

Philip E. Cutler, Esq.
Chair, Public Arbitrator

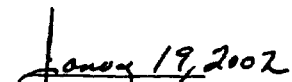
Signature Date

Paul D. Hansen, Esq.
Public Arbitrator

Signature Date



William J. Chambers
Industry/Non-Public Arbitrator



Signature Date

Date Served:

JAN 21 2002

Date of Service