

**AWARD**  
**NASD Dispute Resolution, Inc.**

---

In the Matter of the Arbitration Between

Name of Claimant

Dain Rauscher Incorporated

and

00-03875  
Scottsdale, Arizona

Name of Respondent

Michael A. Manfredi

---

**REPRESENTATION OF PARTIES**

Dain Rauscher Incorporated ("**Claimant**") was represented by David Y. Trevor, Esq., Dorsey & Whitney, LLP, Minneapolis, Minnesota.

Michael A. Manfredi ("**Respondent**") was represented by James M. Jellison, Esq., Schleier, Jellison & Schleier, P.C., Phoenix, Arizona.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 5, 2000. David Fogel signed Submission Agreement of Claimant Dain Rauscher Incorporated on August 4, 2000.

Answer to Statement of Claim was filed by Respondent Michael A. Manfredi on or about November 20, 2000. Answer to Statement of Claim and Counterclaims was filed on or about October 23, 2001. Submission Agreement of Respondent Michael A. Manfredi was signed on November 17, 2000.

**CASE SUMMARY**

Claimant submitted the following summary:

This is an Employee Forgivable Loan Case wherein Claimant Dain Rauscher Incorporated ("Dain Rauscher") seeks to collect on a promissory note made by Respondent Michael Manfredi when he joined Dain Rauscher in December of 1997. The amount of the promissory note at issue is Sixty-Three Thousand, Four Hundred and Twelve Dollars (\$63,412.00), plus interest, attorney's fees and costs.

Respondent denied any liability under the terms of the Promissory Note due to Claimant's breach of contract. Respondent also stated that Claimant illegally deducted wages from his last paycheck and that claimant wrongfully terminated him.

In his Counterclaim, Respondent alleged that at the time of his termination, he was defamed by the inclusion of a statement on his Form U-5 that he was terminated for "Failure to meet Performance Guidelines." Respondent further alleged that he had performed at 181% of the goals set by Claimant in the Performance Improvement Plan in addition to maintaining an average performance which significantly exceeded the goals set in the Plan.

### **RELIEF REQUESTED**

Claimant requested that Respondent be ordered to pay \$63,412.00 plus accrued interest at the rate of twelve percent (12%) per annum, and the costs and expenses of this proceeding, including attorneys' fees.

Respondent in his Answer and Counterclaims requested that Claimant be ordered to pay his lost wages and benefits in the total amount of \$250,000.00 (approximately 2.5 years worth), appropriate prejudgment and post judgment interest, damages for emotional distress and harm to reputation, punitive or exemplary damages, treble damages under A.R.S. §23-355 (for wage claim only), costs and expenses of this proceeding, and attorneys' fees. Respondent further requested that the Arbitration Panel enter injunctive relief, ordering Claimant to amend the U-5 to reflect that he was terminated without cause.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc. (the "NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted by Dain Rauscher Incorporated in this matter shall be and hereby are denied in their entirety.

2. Counterclaim Respondent Dain Rauscher Incorporated shall be and hereby is liable for and shall pay to Counterclaim Claimant Michael A. Manfredi the sum of \$25,000.00 (**Twenty Five Thousand Dollars**) as compensatory damages.
3. Counterclaim Respondent Dain Rauscher Incorporated shall be and hereby is liable for and shall pay to Counterclaim Claimant Michael A. Manfredi the sum of \$18,142.65 (**Eighteen Thousand One Hundred Forty Two Dollars and Sixty Five Cents**) as withheld wages. This sum represents the amount withheld (\$6,047.55) trebled pursuant to A.R.S. §23-355.
4. Interest at the rate of 10% per annum is awarded on the sums set forth above from Mr. Manfredi's date of termination to and inclusive of the date this award is paid.
5. Counterclaim Respondent Dain Rauscher Incorporated shall be and hereby is liable for and shall pay to Counterclaim Claimant Michael A. Manfredi the sum of \$7,638.85 (**Seven Thousand Six Hundred Thirty Eight Dollars and Eighty Five Cents**) as attorneys' fees.
6. Counterclaim Respondent Dain Rauscher Incorporated shall be and hereby is liable for and shall pay to Counterclaim Claimant Michael A. Manfredi the sum of \$50,000.00 (**Fifty Thousand Dollars**) as punitive damages.
7. The Panel recommends the expungement from Respondent Michael A. Manfredi's registration records maintained by the NASD Central Registration Depository ("CRD") all references to the reasons for termination which reflect termination for cause and replace the reason for termination as "other – change in company philosophy to fee based clientele."

The expungement relief is granted based on the defamatory nature of the information in the CRD system, however, there has been no finding that the elements required to satisfy a claim for defamation under governing law have been met.

8. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
9. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

|                          |              |
|--------------------------|--------------|
| Initial claim filing fee | = \$1,000.00 |
| Counter claim filing fee | = \$ 300.00  |

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is Dain Rauscher Incorporated.

|                         |              |
|-------------------------|--------------|
| Member surcharge        | = \$1,000.00 |
| Pre-hearing process fee | = \$ 600.00  |
| Hearing process fee     | = \$1,500.00 |

#### **Adjournment Fees**

Adjournments requested during these proceedings:

|  |             |
|--|-------------|
| Hearing Date(s), adjournment requested by Respondent | = \$ 750.00 |
|--|-------------|

#### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

|  |   |
|--|---|
| Four (4) Hearing sessions x \$1,125.00 | = \$4,500.00                            |
| Hearing Date(s):                       | October 23, 2001      2 sessions        |
|  | <u>October 24, 2001      2 sessions</u> |
| Total Forum Fees                       | = \$4,500.00                            |

The Arbitration Panel has assessed \$4,500.00 of the forum fees to Dain Rauscher Incorporated.

**Fee Summary**

Claimant, Dain Rauscher Incorporated, shall be and hereby is liable for:

|   |                     |
|---|---------------------|
| Initial Filing Fee                        | = \$1,000.00        |
| Member Fees                               | = \$3,100.00        |
| <u>Forum Fees</u>                         | = <u>\$4,500.00</u> |
| Total Fees                                | = \$8,600.00        |
| <u>Less payments</u>                      | = <u>\$4,850.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$3,750.00        |

Respondent, Michael A. Manfredi, shall be and hereby is liable for:

|   |                  |
|---|------------------|
| Counterclaim Filing Fee                   | = \$ 300.00      |
| Adjournment Fee                           | = \$ 750.00      |
| <u>Forum Fees</u>                         | = <u>\$ 0.00</u> |
| Total Fees                                | = \$1,050.00     |
| <u>Less payments</u>                      | = <u>\$ 0.00</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$1,050.00     |

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Raymond R. Wallage - Non-Public Arbitrator, Presiding Chair

James B. Kaiser - Non-Public Arbitrator

Paul J. Robinson - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Raymond R. Wallage  
Raymond R. Wallage  
Non-Public Arbitrator, Presiding Chair

December 20, 2001  
Signature Date

/s/ James B. Kaiser  
James B. Kaiser  
Non-Public Arbitrator

December 21, 2001  
Signature Date

/s/ Paul J. Robinson  
Paul J. Robinson  
Non-Public Arbitrator

December 21, 2001  
Signature Date

NASD Dispute Resolution, Inc.  
Arbitration No. 00-03875  
Award Page 5 of 5

### Fee Summary

Claimant, Dain Rauscher Incorporated, shall be and hereby is liable for:

|   |              |
|---|--------------|
| Initial Filing Fee                        | = \$1,000.00 |
| Member Fees                               | = \$3,100.00 |
| <u>Forum Fees</u>                         | = \$4,500.00 |
| Total Fees                                | = \$8,600.00 |
| <u>Less payments</u>                      | = \$4,850.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$3,750.00 |

Respondent, Michael A. Manfredi, shall be and hereby is liable for:

|   |              |
|---|--------------|
| Counterclaim Filing Fee                   | = \$ 300.00  |
| Adjournment Fee                           | = \$ 750.00  |
| <u>Forum Fees</u>                         | = \$ 0.00    |
| Total Fees                                | = \$1,050.00 |
| <u>Less payments</u>                      | = \$ 0.00    |
| Balance Due NASD Dispute Resolution, Inc. | = \$1,050.00 |

All balances are due to NASD Dispute Resolution, Inc.

### ARBITRATION PANEL

Raymond R. Wallage - Non-Public Arbitrator, Presiding Chair

James B. Kaiser - Non-Public Arbitrator

Paul J. Robinson - Non-Public Arbitrator

Concurring Arbitrators:

  
Raymond R. Wallage

Non-Public Arbitrator, Presiding Chair

12-20-2001  
Signature Date

James B. Kaiser

Non-Public Arbitrator

Signature Date

Paul J. Robinson

Non-Public Arbitrator

Signature Date

**Fee Summary**

Claimant, Dain Rauscher Incorporated, shall be and hereby is liable for:

|   |              |
|---|--------------|
| Initial Filing Fee                        | = \$1,000.00 |
| Member Fees                               | = \$3,100.00 |
| <u>Forum Fees</u>                         | = \$4,500.00 |
| Total Fees                                | = \$8,600.00 |
| <u>Less payments</u>                      | = \$4,850.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$3,750.00 |

Respondent, Michael A. Manfredi, shall be and hereby is liable for:

|   |              |
|---|--------------|
| Counterclaim Filing Fee                   | = \$ 300.00  |
| Adjournment Fee                           | = \$ 750.00  |
| <u>Forum Fees</u>                         | = \$ 0.00    |
| Total Fees                                | = \$1,050.00 |
| <u>Less payments</u>                      | = \$ 0.00    |
| Balance Due NASD Dispute Resolution, Inc. | = \$1,050.00 |

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Raymond R. Wallage - Non-Public Arbitrator, Presiding Chair

James B. Kaiser - Non-Public Arbitrator

Paul J. Robinson - Non-Public Arbitrator

Concurring Arbitrators:

Non- Raymond R. Wallage  
Public Arbitrator, Presiding Chair

James B. Kaiser  
Non- Public Arbitrator

Signature Date

12/21/01  
Signature Date

Paul J. Robinson  
Non-Public Arbitrator

Signature Date

NASD Dispute Resolution, Inc.  
 Arbitration No. 00-03875  
 Award Page 5 of 5

**Fee Summary**

Claimant, Dain Rauscher Incorporated, shall be and hereby is liable for:

|   |              |
|---|--------------|
| Initial Filing Fee                        | = \$1,000.00 |
| Member Fees                               | = \$3,100.00 |
| <u>Forum Fees</u>                         | = \$4,500.00 |
| Total Fees                                | = \$8,600.00 |
| <u>Less payments</u>                      | = \$4,850.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$3,750.00 |

Respondent, Michael A. Manfredi, shall be and hereby is liable for:

|   |              |
|---|--------------|
| Counterclaim Filing Fee                   | = \$ 300.00  |
| Adjournment Fee                           | = \$ 750.00  |
| <u>Forum Fees</u>                         | = \$ 0.00    |
| Total Fees                                | = \$1,050.00 |
| <u>Less payments</u>                      | = \$ 0.00    |
| Balance Due NASD Dispute Resolution, Inc. | = \$1,050.00 |

All balances are due to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Raymond R. Wallage - Non-Public Arbitrator, Presiding Chair  
 James B. Kaiser - Non-Public Arbitrator  
 Paul J. Robinson - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
 Raymond R. Wallage  
 Public Arbitrator, Presiding Chair

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 James B. Kaiser  
 Public Arbitrator

\_\_\_\_\_  
 Signature Date

\_\_\_\_\_  
 Paul J. Robinson  
 Non-Public Arbitrator

12/21/01  
 Signature Date