

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Kenneth Rosenthal d/b/a KenRose Associates, (Claimant) vs. Dain Rauscher Incorporated,
(Respondent)

Case Number: 00-05731

Hearing Site: Boston, Massachusetts

REPRESENTATION OF PARTIES

Claimant, Kenneth Rosenthal d/b/a KenRose Associates, hereinafter referred to as "Claimant":
Louis J. Tavano, Esq., a sole practitioner, Las Vegas, NV.

Respondent, Dain Rauscher Incorporated, hereinafter referred to as "Respondent": Jerald L.
Jeske, Esq., Foley & Lardner, Chicago, IL.

CASE INFORMATION

Statement of Claim filed on or about: December 26, 2000.

Amended Statement of Claim filed on or about: December 5, 2001.

Reply to Counterclaim filed by Claimant on or about: March 28, 2001.

Claimant signed the Uniform Submission Agreement: December 23, 2000.

Statement of Answer and Counterclaim filed by Respondent on or about: February 22, 2001.

Respondent signed the Uniform Submission Agreement: February 14, 2001.

CASE SUMMARY

Claimant asserted the following causes of action: breach of agreement; breach of warranties;
breach of the covenant of good faith and fair dealing; negligence; violation of NASD Rules;
and violation of the Massachusetts Uniform Securities Act. Claimant's claim involved a
stock identified by the symbol CIEN.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the
Statement of Claim and Amended Statement of Claim.

In its Counterclaim, Respondent asserted the following causes of action: breach of implied contract; unjust enrichment; quantum meruit; and fraud. Respondent's Counterclaim involved unspecified stocks.

Unless specifically admitted in his Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: any losses suffered by Respondent as a consequence of its relationship with Claimant are a result of Respondent's own negligence, incompetence, greed, and failure to hire and supervise employees with the experience to execute simple trades, and to understand the trading strategies of Claimant; Claimant settled all of the trades in his account between March 2, 2000 and July 28, 2000 in a timely, proper, and appropriate fashion; and the terms of any agreement which may exist between Claimant and Respondent are subject to debate.

RELIEF REQUESTED

Claimant requested:

- a. Compensatory damages in the amount of \$3,181,614.00, plus interest at the rate of 10% accruing from August 24, 2000;
- b. That the outstanding debit in Claimant's account be erased, eradicated, satisfied, and forever held for naught;
- c. Attorneys' fees and costs of suit incurred herein;
- d. An Award of exemplary and punitive damages in the amount of three times the compensatory damages;
- e. Remedies provided by statute under the Massachusetts Uniform Securities Act;
- f. Rescission of certain trades made by Claimant in his account at Respondent firm, in the sole discretion of Claimant; and
- g. Such other and further relief as the Panel may deem just and proper.

Respondent requested that:

- a. Claimant's Statement of Claim be dismissed;
- b. An Award be entered in its favor on all claims set forth in Claimant's Statement of Claim;
- c. Claimant recover nothing from his Statement of Claim; and
- d. Respondent recover its attorneys' fees and costs in defending this matter.

In its Counterclaim, Respondent requested:

- a. Compensatory damages in the amount of \$3,863,773.00, plus interest at the highest rate permitted by law;
- b. Costs and reasonable attorneys' fees in pursuing this action;
- c. Punitive damages; and
- d. Such other relief as is just and proper.

In his Reply, Claimant requested:

- a. That the Counterclaim be dismissed;
- b. An Award in his favor on all claims in the Counterclaim; and
- c. An Award of attorneys' fees and costs in defending the Counterclaim.

OTHER ISSUES CONSIDERED AND DECIDED

During the hearings in this matter, Respondent made a Motion to Dismiss Claimant's claim on the grounds that Claimant was not the real party in interest in this matter. The Panel denied said Motion, with leave for Respondent to renew it at the close of the hearing.

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.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are hereby denied in their entirety.
2. Claimant be and hereby is liable for and shall pay to Respondent the sum of \$3,865,776.46 as compensatory damages, plus interest at the rate of 6% per annum accruing from the date of this Award until date of payment in full.
3. All requests for punitive damages are hereby denied.
4. All other requests for relief are hereby denied.

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 | = \$ 600.00 |
| Counterclaim filing fee | = \$ 2,000.00 |

Member Fees

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

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|-------------------------|---------------|
| Member surcharge | = \$ 3,600.00 |
| Pre-hearing process fee | = \$ 600.00 |
| Hearing process fee | = \$ 5,000.00 |

Adjournment Fees

Adjournments requested during these proceedings:

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|---|---------------|
| Nov. 12, 13, 14, 19 & 20, 2001, adjournment by Respondent | = \$ 1,200.00 |
|---|---------------|

Forum Fees and Assessments

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

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|--|-------------|
| Two (2) Pre-hearing sessions with a single arbitrator x \$450.00 | = \$ 900.00 |
| Pre-hearing conferences: October 31, 2001 | 1 session |
| November 1, 2001 | 1 session |

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|--|---------------|
| Two (2) Pre-hearing sessions with Panel x \$1,200.00 | = \$ 2,400.00 |
| Pre-hearing conferences: June 1, 2001 | 1 session |
| November 7, 2001 | 1 session |

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|--|---------------|
| Nine (9) Hearing sessions x \$1,200.00 | = \$10,800.00 |
| Hearing Dates: February 4, 2002 | 2 sessions |
| February 5, 2002 | 2 sessions |
| February 6, 2002 | 2 sessions |
| February 7, 2002 | 2 sessions |
| February 8, 2002 | 1 session |

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|------------------|---------------|
| Total Forum Fees | = \$14,100.00 |
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1. The Panel has assessed \$7,050.00 of the forum fees against Claimant.
2. The Panel has assessed \$7,050.00 of the forum fees against Respondent.

Fee Summary

1. Claimant be and hereby is solely liable for:

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|---|---------------|
| Initial Filing Fee | = \$ 600.00 |
| <u>Forum Fees</u> | = \$ 7,050.00 |
| Total Fees | = \$ 7,650.00 |
| <u>Less payments</u> | = \$ 4,400.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 3,250.00 |

2. Respondent be and hereby is solely liable for:


| | |
|---|---------------|
| Counterclaim Filing Fee | = \$ 2,000.00 |
| Member Fees | = \$ 9,200.00 |
| Adjournment Fee | = \$ 1,200.00 |
| <u>Forum Fees</u> | = \$ 7,050.00 |
| Total Fees | = \$19,450.00 |
| <u>Less payments</u> | = \$13,600.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 5,850.00 |

All balances are due and payable to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

| | | |
|-------------------------|---|------------------------------------|
| Thomas E. Weesner, Esq. | - | Public Arbitrator, Presiding Chair |
| Donald G. Kennedy | - | Public Arbitrator |
| William S. Tagerman | - | Industry Arbitrator |

Concurring Arbitrators' Signatures



Thomas E. Weesner, Esq.
Public Arbitrator, Presiding Chair

March 23, 2002
Signature Date

Donald G. Kennedy
Public Arbitrator

Signature Date

William S. Tagerman
Industry Arbitrator

Signature Date

April 2, 2002
Date of Service (For NASD office use only)


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| Thomas E. Weesner, Esq. | - | Public Arbitrator, Presiding Chair |
| Donald G. Kennedy | - | Public Arbitrator |
| William S. Tagerman | - | Industry Arbitrator |

Concurring Arbitrators' Signatures

Thomas E. Weesner, Esq.
Public Arbitrator, Presiding Chair

Signature Date


Donald G. Kennedy
Public Arbitrator

March 6, 2002
Signature Date

William S. Tagerman
Industry Arbitrator

Signature Date

April 2, 2002
Date of Service (For NASD office use only)

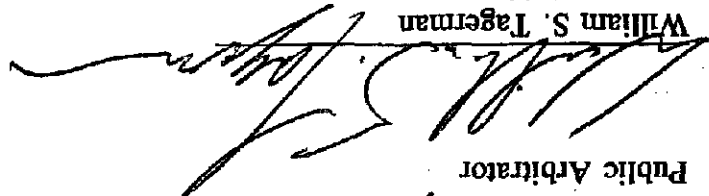
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| William S. Tagerman | - | Industry Arbitrator |

Concurring Arbitrators' Signatures

Thomas E. Weesner, Esq.
Public Arbitrator, Presiding Chair

Donald G. Kennedy
Public Arbitrator


William S. Tagerman
Industry Arbitrator

April 2, 2002
Date of Service (For NASD office use only)

Signature Date

2/5/02

Signature Date

Signature Date