

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

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In the Matter of the Arbitration Between

Name of Claimant

Dain Rauscher Incorporated n/k/a RBC Dain Rauscher Inc.

and

01-02941  
Phoenix, Arizona

Name of Respondent

Terry Joe Vail

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**REPRESENTATION OF PARTIES**

Dain Rauscher Incorporated n/k/a RBC Dain Rauscher Inc. ("Claimant") was represented by Shelly L. Parnell, Esq., Dorsey & Whitney LLP, Minneapolis, Minnesota.

Terry Joe Vail ("Respondent") appeared *pro se*.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 4, 2001. Submission Agreement of Claimant Dain Rauscher Incorporated n/k/a RBC Dain Rauscher Inc. was signed on May 15, 2001 by David Fogel.

Undated letter was filed by Respondent Terry Joe Vail August 2, 2001. Submission Agreement of Respondent Terry Joe Vail was signed on July 26, 2001.

**CASE SUMMARY**

Claimant alleged that this is an Employee Forgivable Loan Case wherein Claimant Dain Rauscher Incorporated ("Dain Rauscher") seeks to collect on a promissory note made by Respondent Terry Joe Vail when he joined Dain Rauscher in August, 1997.

Respondent denied the allegations set forth in the Statement of Claim. Respondents specifically stated that Claimant had grossly misled him on the pay structure he was to receive; how to run seminars; how to have seminars paid for; and how to be reimbursed. It was also alleged by Respondent that he was discriminated or retaliated against by not having accounts distributed to him when brokers left the firm.

### **RELIEF REQUESTED**

Claimant requested that Respondents be ordered to pay \$24,391.00, plus accrued interest at the highest lawful rate (capped at 12%) per annum in the amount of \$883.95 in addition to taxes that Claimant paid on Respondent's behalf in the amount of \$375.66, and the costs and expenses of this proceeding, including attorneys' fees. At the hearing, Claimant updated the interest calculations and requested attorneys' fees in the amount of \$9,400.00.

At the hearing, Respondent requested that the claims asserted against him be denied.

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

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrator has determined that Respondent Terry Joe Vail had been properly served with the Statement of Claim pursuant to Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Terry Joe Vail had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

The parties have agreed that a handwritten, signed Award may be entered. The parties have also agreed to receive a conformed copy of the award while the original remains on file with the NASD Dispute Resolution, Inc. (the "NASD").

### **AWARD**

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

1. Respondent Terry Joe Vail shall be and hereby is liable for and shall pay to Claimant Dain Rauscher Incorporated n/k/a RBC Dain Rauscher Inc. the sum of \$29,697.00 (**Twenty Nine Thousand Six Hundred Ninety Seven Dollars**) as compensatory damages.
2. 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.
3. 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

#### **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, the member firm is Dain Rauscher Incorporated n/k/a RBC Dain Rauscher Inc.

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

#### **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:

|   |            |
|---|------------|
| One (1) Pre-hearing session with a single arbitrator x \$450.00 | = \$450.00 |
| Pre-hearing conference: November 19, 2001 1 session             |            |

|   |            |
|---|------------|
| One (1) Hearing sessions x \$450.00       | = \$450.00 |
| Hearing Date: February 25, 2002 1 session |            |
| Total Forum Fees                          | = \$900.00 |

The Arbitration Panel has assessed \$0.00 of the forum fees to Dain Rauscher Incorporated n/k/a RBC Dain Rauscher Inc.

The Arbitration Panel has assessed \$900.00 of the forum fees to Terry Joe Vail.

#### **Fee Summary**

Claimant, Dain Rauscher Incorporated n/k/a RBC Dain Rauscher Inc., shall be and hereby is liable for:

|   |              |
|---|--------------|
| Initial Filing Fee                        | = \$1,000.00 |
| Member Fees                               | = \$2,200.00 |
| <u>Forum Fees</u>                         | = \$ 0.00    |
| Total Fees                                | = \$3,200.00 |
| <u>Less payments</u>                      | = \$2,650.00 |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 550.00  |

Respondent, Terry Joe Vail, shall be and hereby is liable for:


|   |             |
|---|-------------|
| <u>Forum Fees</u>                         | = \$ 900.00 |
| Total Fees                                | = \$ 900.00 |
| <u>Less payments</u>                      | = \$ 0.00   |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 900.00 |

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Ronald K. Sprague – Non-Public Arbitrator

Concurring Arbitrator:

  
\_\_\_\_\_  
Ronald K. Sprague  
Non Public Arbitrator, Presiding Chair

2-25-02  
Signature Date