

AWARD
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

RBC Dain Rauscher Inc.

and

01-02942
Phoenix, Arizona

Name of Respondent

Jon C. Otto

REPRESENTATION OF PARTIES

RBC Dain Rauscher Inc. ("**Claimant**") was represented by Frank Lewis, Esq., Begam, Lewis, Marks & Wolfe, Phoenix, Arizona.

Jon C. Otto ("**Respondent**") appeared *pro se*.

CASE INFORMATION

The Statement of Claim was filed on or about June 4, 2001. Claimant's Response to Respondent's Answer and Counterclaim was filed on or about September 25, 2001. Submission Agreement of Claimant RBC Dain Rauscher Inc. was signed on May 11, 2001 by David Fogel.

Statement of Answer was filed by Respondent Jon C. Otto on or about August 16, 2001. Amended Counterclaim was filed on or about October 24, 2001. Submission Agreement of Respondent Jon C. Otto was signed on July 24, 2001.

CASE SUMMARY

Claimant alleged that this is an Employee Forgivable Loan Case wherein Claimant seeks to collect on a promissory note made by Respondent Jon C. Otto when he joined Claimant in February, 2000. In its Response to Respondent's Answer and Counterclaim, Claimant denied the allegations that material misrepresentations were made. Specifically, Claimant stated that Respondent refused to work and abandoned his job, leaving it no choice but to terminate his employment.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated that Claimant had misled him on the pay structure he was to receive; failed to provide promised technical equipment and office space; failed to provide adequate sales assistance; and

damaged his relationship with key clients. It was alleged by Respondent in his Counterclaim, that Claimant failed to pay unpaid bonuses, and failed to pay commissions.

RELIEF REQUESTED

Claimant requested an award in the amount of \$98,925.00 plus accrued interest at the rate of 6.46% per annum in the amount of \$3,075.75, and the costs and expenses of this proceeding, including attorneys' fees. In its Response to Respondent's Answer and Counterclaim, Claimant requested that the Panel dismiss the Counterclaim and enter an award in favor of it on its promissory note in the amount previously requested.

Respondent requested that the claims asserted against him be denied in their entirety. In his Counterclaim, respondent requested an award of compensatory damages in the amount of \$65,300.00 and punitive damages in the amount of \$284,000.00 for a total of \$349,300.00, and costs in the amount of \$325.00.

OTHER ISSUES CONSIDERED & DECIDED

During the Initial Pre-hearing conference held on February 5, 2002, Mr. Otto stipulated that he had voluntarily signed the promissory note in question, and duress or lack of free will is not an issue. The Arbitration Panel determined that the burden of proof is on Mr. Otto to prove avoidance of the promissory note.

At the hearing, Respondent withdrew the claim for commission not paid on Account #2233-4403 in the amount of \$3,100.00.

Claimant's Motion to Strike the Portion of Respondent's Counterclaim alleging that Claimant's actions violated ARS 23-1501 was granted. All references in the Counterclaim to violations of Arizona law and ARS 23-1501 in particular were stricken.

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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Jon C. Otto shall be and hereby is liable for and shall pay to Claimant RBC Dain Rauscher Inc. the sum of \$70,850.00 calculated as follows: \$95,850.00 to Dain Rauscher on the Claim, less a setoff of \$25,000.00 to Jon C. Otto on the Counterclaim, for a net award to Dain Rauscher of \$70,850.00.
2. Interest at the rate of 6.46% per annum is awarded on the above stated sum from and inclusive of February 22, 2001 to and inclusive of the date this award is paid in full.
3. Respondent Jon C. Otto shall be and hereby is liable for and shall pay to Claimant RBC Dain Rauscher Inc. the sum of \$9,000.00 (**Nine Thousand Dollars and no Cents**) as attorneys' fees. The undersigned arbitrators find that they have the authority to award attorneys' fees under the terms of the contract at issue in this matter.
4. 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.
5. 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 RBC Dain Rauscher Inc.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

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(s) with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference(s): February 5, 2002 1 session	
Three (3) Hearing sessions x \$1,125.00	= \$3,375.00
Hearing Date(s): May 29, 2002 2 sessions	
May 30, 2002 1 session	
Total Forum Fees	= \$4,500.00

The Arbitration Panel has assessed \$2,250.00 of the forum fees to RBC Dain Rauscher Inc..
The Arbitration Panel has assessed \$2,250.00 of the forum fees to Jon C. Otto.

Fee Summary

Claimant, RBC Dain Rauscher Inc., shall be and hereby is liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	= \$ 2,250.00
Total Fees	= \$ 7,825.00
<u>Less payments</u>	= \$ 5,850.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,975.00

Respondent, Jon C. Otto, shall be and hereby is liable for:

Counter Claim Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 2,250.00
Total Fees	= \$ 2,550.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,550.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

Shirley A. Lilien, Esq. - Public Arbitrator, Presiding Chair
Richard L. Merkel - Public Arbitrator
William E. Hallinan, CFA - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Shirley A. Lilien
Shirley A. Lilien, Esq.
Public Arbitrator, Presiding Chair

June 6, 2002
Signature Date

/s/ Richard L. Merkel
Richard L. Merkel
Public Arbitrator

June 3, 2002
Signature Date

/s/ William E. Hallinan
William E. Hallinan, CFA
Non-Public Arbitrator

June 4, 2002
Signature Date

ARBITRATION PANEL

Shirley A. Lifson, Esq. - Public Arbitrator, Presiding Chair
Richard L. Merkel - Public Arbitrator
William E. Hallinan, CFA - Non-Public Arbitrator

Concurring Arbitrators:


Shirley A. Lifson, Esq.
Public Arbitrator, Presiding Chair

6/6/02
Signature Date

Richard L. Merkel
Public Arbitrator

Signature Date

William E. Hallinan, CFA
Non-Public Arbitrator

Signature Date

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Arbitration No. 01-02942
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Richard L. Merkel - Public Arbitrator
William E. Hallinan, CFA - Non-Public Arbitrator

Concurring Arbitrators:

Shirley A. Lilien, Esq.
Public Arbitrator, Presiding Chair

Signature Date


* 

6/3/02
Signature Date

Richard L. Merkel
Public Arbitrator

William E. Hallinan, CFA
Non-Public Arbitrator

Signature Date

* Re-signed original signature


6/3/02

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Public Arbitrator, Presiding Chair

Signature Date

Richard L. Merkel
Public Arbitrator

Signature Date

William E. Hallinan

William E. Hallinan, CFA
Non-Public Arbitrator

June 4, 2002

Signature Date