

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Brent Rynn, Claimant v. Quick & Reilly, Inc., Richard F. Donovan, and Matthew T. Gellene,  
Respondents

Case Number: 02-04801

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Person vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimant:

Stephen Danz, Esq.  
Danz & Gerber  
Sherman Oaks, California

For Respondents:

Timothy N. Will, Esq.  
Albert & Will, LLP  
Torrance, California

**CASE INFORMATION**

Statement of Claim filed: August 9, 2002

Claimant's Uniform Submission Agreement signed: August 8, 2002

Statement of Answer filed by Respondents: November 5, 2002

Respondent Quick & Reilly, Inc.'s Uniform Submission Agreement signed: September 30, 2002

Respondent Richard F. Donovan's Uniform Submission Agreement signed: October 29, 2002

**CASE SUMMARY**

Claimant alleged the following causes of action: public policy tort termination, unfair business practices, California Labor Code violations, accounting of commissions due, negligent and intentional misrepresentation, intentional and negligent infliction of emotional distress, breach of

covenant of good faith and fair dealing, common law and statutory fraud and deceit, breach of contract, and negligent and intentional interference in prospective economic advantage.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and assertive affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested \$2,175,000.00 in compensatory damages, \$825,000.00 in punitive damages, exemplary damages where allowed by law, interest, costs, including attorneys' fees, accounting of commissions owed to Claimant, and an order prohibiting Respondents from contacting, soliciting, or otherwise marketing securities to clients of Claimant.

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

### **OTHER ISSUES CONSIDERED AND DECIDED**

On January 14, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On October 31, 2002, Respondent Richard F. Donovan's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On November 20, 2002, Respondent Quick & Reilly, Inc. and Matthew T. Gellene's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Respondent Matthew T. Gellene did not file with NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the NASD Dispute Resolution Code of Arbitration ("the Code") and having answered the claim is bound by the determination of the Panel on all issues submitted.

On January 9, 2004, the Panel reviewed the parties post hearing submissions and Claimant's December 22, 2003 request to re-open the evidentiary hearing to introduce evidence relating to punitive and exemplary damages against Respondent Quick & Reilly, Inc. The Panel denied Claimant's request to re-open the evidentiary hearing.

The parties 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, testimony, and evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims for compensatory damages are denied.
- 2) Claimant's claims for punitive and exemplary damages are denied.
- 3) Claimant's claim for an order prohibiting Respondents from contacting, soliciting, or otherwise marketing securities to clients of Claimant is denied.
- 4) Claimant's request for an accounting of commissions owed is denied.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Richard F. Donovan and Matthew T. Gellene's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondents Richard F. Donovan and Matthew T. Gellene must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 7) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
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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 Quick & Reilly, Inc. is a party and is assessed the following fees:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,000.00
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the Panel or Chairperson, including a pre-hearing conference, that lasts four (4) hours or less. The following fees are assessed:

(1) Pre-hearing conference session with the Chair @ \$ 450.00/session	= \$ 450.00
Pre-hearing conference: December 3, 2003 1 session	
(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: June 19, 2003 1 session	
(4) Hearing sessions @ \$1,200.00/session	= \$ 4,800.00
Hearings: December 15, 2003 2 sessions	
December 16, 2003 2 sessions	
<b>Total Forum Fees</b>	<b>= \$ 6,450.00</b>

The Panel assessed \$ 6,450.00 of the forum fees to Respondent Quick & Reilly, Inc.

**Fee Summary**

1. Claimant Brent G. Rynn is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
<u>Less payments</u>	<u>= \$(1,700.00)</u>
<b>Refund Due</b>	<b>= \$(1,200.00)</b>

2. Respondent Quick & Reilly, Inc. is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	<u>= \$ 6,450.00</u>
Total Fees	= \$15,000.00
<u>Less payments</u>	<u>= \$ (8,550.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,450.00</b>

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

**ARBITRATION PANEL**

Kenneth I. Rosenblum	-	Non-Public Arbitrator, Presiding Chair
Michael W. Burnett, CFA	-	Non-Public Arbitrator
Donald G. Gloisten, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Kenneth I. Rosenblum  
Chair, Public Arbitrator

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Signature Date

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Michael W. Burnett, CFA  
Public Arbitrator

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Signature Date

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Donald G. Gloisten, Esq.  
Non-Public Arbitrator

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Signature Date

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Date of Service

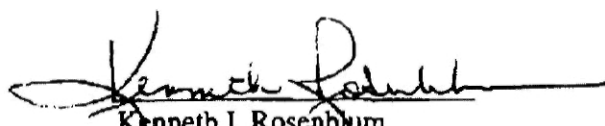
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Donald G. Gloisten, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Chair, Public Arbitrator

1/29/04  
Signature Date

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Michael W. Burnett, CFA  
Public Arbitrator

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Signature Date

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Non-Public Arbitrator

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Donald G. Gloisten, Esq.  
Non-Public Arbitrator

1/31/04  
Signature Date





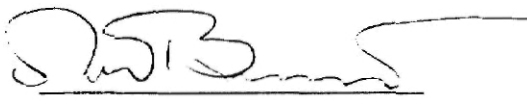
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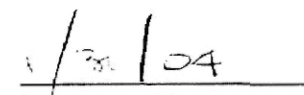
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