

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
RBC Dain Rauscher, Inc.

Case Number: 02-05331

Name of the Respondent  
Edmund Kosakowsky

Hearing Site: Pittsburgh, PA

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Nature of the Dispute: Member vs. Associated Person

**REPRESENTATION OF PARTIES**

Claimant, RBC Dain Rauscher, Inc., hereinafter referred to as "Claimant", was represented by Karl L. Marquardt, Esq., Bressler, Amery & Ross, P.C., New York, New York.

Respondent, Edmund Kosakowsky, hereinafter referred to as "Respondent", was represented by Foster S. Goldman, Jr., Esq., Market, Schafer & Goldman, P.C., Pittsburgh, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on September 9, 2002.

Claimant signed the Uniform Submission Agreement on September 9, 2002.

Statement of Answer and Affirmative Defenses filed by Respondent on or about July 21, 2003.

Respondent signed the Uniform Submission Agreement on July 14, 2003.

Respondent file a Motion for Sanctions on or about July 30, 2004.

**CASE SUMMARY**

Claimant asserted a cause of action for breach of contract. The cause of action relates to Respondent's employment with Claimant.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses among others: failure to state a claim upon which relief may be granted.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$100,000.00, interest at the Broker Call Rate, such amount to be adjusted to reflect those monies which have been forgiven, plus

attorneys' fees and disbursements and such further relief as the Arbitration Panel ("the Panel") deems appropriate.

Respondent requested that Claimant's claim be dismissed in its entirety and the Respondent be awarded his legal fees and his costs in having to defend himself in this matter.

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

The Panel denied Respondent's Motion for Sanctions in an order dated August 30, 2004.

#### **AWARD**

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

1. Respondent shall pay to Claimant forty-five thousand dollars and no cents (\$45,000.00) in compensatory damages;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
3. Any and all relief not specifically addressed herein is denied in its entirety.

#### **FEES**

Pursuant to the Code, the following fees are assessed:

##### **Filing Fees**

NASD Dispute Resolution 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. Accordingly, RBC Dain Rauscher, Inc. is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$ 450.00 = \$ 900.00  
Pre-hearing conferences: March 16, 2004 1 session  
April 21, 2004 1 session

One (1) Pre-hearing session with Panel @ \$ 750.00 = \$ 750.00  
Pre-hearing conference: December 29, 2003 1 session

Four (4) Hearing sessions @ \$ 750.00 = \$ 3,000.00  
Hearing Dates: September 8, 2004 2 sessions  
September 9, 2004 2 sessions  

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Total Forum Fees = \$ 4,650.00

1. The Panel has assessed \$2,325.00 of the forum fees to Claimant.
2. The Panel has assessed \$2,325.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is assessed and shall pay  
Initial Filing Fee = \$ 1,000.00  
Member Fees = \$ 3,550.00  
Forum Fees = \$ 2,325.00  

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Total Fees = \$ 6,875.00  
Less payments = \$ 7,000.00  
Balance to be credited to Claimant's CRD account = \$ 125.00

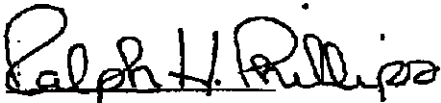
2. Respondent is assessed and shall pay  
Forum Fees = \$ 2,325.00  
Total Fees = \$ 2,325.00  
Less payments = \$ 0.00  
Balance Due NASD Dispute Resolution = \$ 2,325.00

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

ARBITRATION PANEL

Ralph H. Phillips	-	Non-Public Arbitrator, Chair person
David J. Capriotti	-	Non-Public Arbitrator, Panel st
Thomas M. Driscoll, Jr.	-	Non-Public Arbitrator, Panel st

Concurring Arbitrators' Signatures



Ralph H. Phillips  
Non-Public Arbitrator, Presiding Chairperson

09/29/2004  
Signature Date

\_\_\_\_\_  
David J. Capriotti  
Non-Public Arbitrator, Panelist

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

\_\_\_\_\_  
Thomas M. Driscoll, Jr.  
Non-Public Arbitrator, Panelist

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

September 29, 2004  
Date of Service (For NASD Dispute Resolution office use only)

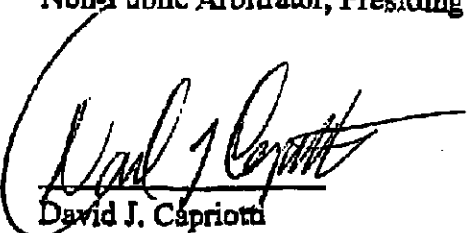
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Ralph H. Phillips  
Non-Public Arbitrator, Presiding Chairperson

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

  
David J. Capriotti  
Non-Public Arbitrator, Panelist

9/28/04  
Signature Date

Thomas M. Driscoll, Jr.  
Non-Public Arbitrator, Panelist

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Signature Date

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Non-Public Arbitrator, Presiding Chairperson

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Signature Date

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David J. Capriotti  
Non-Public Arbitrator, Panelist

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Signature Date

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*Thomas M. Driscoll, Jr.*  
Thomas M. Driscoll, Jr.  
Non-Public Arbitrator, Panelist

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*9-29-04*  
Signature Date

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*September 29, 2004*  
Date of Service (For NASD Dispute Resolution office use only)