

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Leilah D. Schou

and

02-06261
Phoenix, Arizona

Name of Respondents

RBC Dain Rauscher Inc.
Larry K. Wetterschneider
Richard E. Munding
Rittenhouse Financial Services, Inc.
Navellier & Associates, Inc.
Nicholas-Applegate Capital
Roxbury Capital Management LLC

Nature of the Dispute: Customer vs. Member, Associated Persons and Non-Members.

REPRESENTATION OF PARTIES

Leilah D. Schou ("**Claimant**") was represented by Sean E. Brearcliffe, Esq., Rusing & Lopez, P.L.L.P., Tucson, Arizona.

RBC Dain Rauscher Inc. ("**Respondent RBC Dain**") and Larry K. Wetterschneider ("**Respondent Wetterschneider**") were represented by Joel P. Hoxie, Esq. and Matthew P. Fischer, Esq., Snell & Wlmer L.L.P., Phoenix, Arizona.

Richard E. Munding ("**Respondent Munding**") was originally represented by Joel P. Hoxie, Esq. and Matthew P. Fischer, Esq., Snell & Wlmer L.L.P., Phoenix, Arizona but appeared *pro se* at the hearing.

Navellier & Associates, Inc. ("**Respondent Navellier**") was represented by Joseph E. Floren, Esq., Steefel Levitt & Weiss PC, San Francisco, California.

Nicholas-Applegate Capital ("**Respondent Nicholas-Applegate**") was represented by Charles H. Field, Nicholas-Applegate Capital, San Diego, California.

Roxbury Capital Management LLC ("**Respondent Roxbury**") was represented by Navid Yadegar, Esq., Proskauer Rose LLP, Los Angeles, California.

CASE INFORMATION

The Statement of Claim was filed on or about October 18, 2002. Amended Statement of Claim was filed on or about May 23, 2003. Response to Nicholas-Applegate Capital Management's Motion to Dismiss was filed on or about December 12, 2003. Response to Roxbury Capital Management, LLC's Motion to Dismiss was filed on or about December 12, 2003. Submission Agreement of Claimant Leilah D. Schou was signed on October 16, 2002.

Statement of Answer was filed by Respondents RBC Dain Rauscher Inc. Larry K. Wetterschneider and Richard E. Munding on or about August 6, 2003. Respondents' Amended Statement of Answer was filed by Respondents RBC Dain Rauscher Inc. Larry K. Wetterschneider and Richard E. Munding on or about August 4, 2003. Submission Agreement of Respondent RBC Dain Rauscher Inc. was signed on November 7, 2002. Submission Agreement of Respondent Larry K. Wetterschneider was signed on January 28, 2003. Submission Agreement of Respondent Richard E. Munding was signed on October 30, 2002.

Motion to Dismiss was filed by Respondent Nicholas-Applegate Capital and was undated.

Answer, Motion to Dismiss, and Affirmative Defenses of respondent Roxbury Capital Management LLC to Claimant's Amended Statement of Claim was filed on or about November 14, 2003.

CASE SUMMARY

Claimant alleged that:

Defendants caused Leilah's fixed and finite assets to be inappropriately invested, and then failed in any way to monitor and correct the poor investment strategy they put in place through the establishment of the investment people and selection of the money managers. By allowing almost two-thirds of Leilah's assets to be invested in speculative securities, Defendants subjected Leilah to losses in excess of approximately \$360,000.00. During this same period, Munding advised Leilah that she could take \$6,000 per month from her accounts as living expenses. Munding did not advise her of any adverse affect on her capital from such a withdrawal. These errors and omissions by Defendants breached the standard of ordinary care attributable to professional investment advisors, violated their fiduciary obligation to place her needs before their own, fell below standards established by NASD rules and regulations, showed complete disregard for Leilah's risk, put their own interest ahead of hers, and caused Leilah grievous harm.

Respondents RBC Dain, Wetterschneider and Munding denied the allegations set forth in the Statement of Claim. These Respondents specifically stated

At all times Claimant's accounts were at RBC Dain Rauscher, Mr. Munding handled the accounts in a manner consistent with Claimant's stated investment objectives and tolerance for investment risk. Respondents are not responsible for the investment losses incurred by Claimant. Such losses resulted from market forces, the risk of which was knowingly accepted by Claimant and over which Respondents had no control. Further, Respondents made informed and appropriate recommendations to Claimant, but ultimately, all investment decisions were made either by Claimant or by outside investment managers. Mr. Munding had no discretion over any of Claimant's investments.

Respondent Roxbury denied the allegations set forth in the Amended Statement of Claim and specifically stated:

In or about November 1999, Claimant retained Respondent RBC Dain Rauscher ("Dain Rauscher") to manage a portion of her money. Shortly thereafter, Dain Rauscher, with Claimant's consent, retained Roxbury to invest less than fifteen percent of Claimant's overall portfolio consistent with Roxbury's large cap growth model. Given that this was a sub-advisory account – Roxbury's direct relationship was with Dain Rauscher, not Claimant – Roxbury followed Dain Rauscher's investment directives and invested approximately \$150,000 worth of Claimant's \$1.1 million portfolio in securities of companies in Roxbury's large cap growth sector. Soon after Claimant's Roxbury account was established, the U.S. equity markets began their unprecedented declines, thereby causing Claimant's account to depreciate.

RELIEF REQUESTED

Claimant requested an award of damages of no less than \$368,407.00, costs, and such other exemplary and punitive damages as the Panel may deem justified in this matter.

Respondents RBC Dain Rauscher Inc. Larry K. Wetterschneider and Richard E. Munding requested that the Panel dismiss the Amended Statement of Claim and award Respondents their fees and costs incurred in this matter.

Respondent Roxbury requested that the Arbitration Panel:

1. Dismiss Claimant's claims in their entirety;
2. Award Roxbury the costs associated with the defense of this matter, including attorneys' fees and costs of suit; and
3. Any other relief which the panel may find to be just and equitable.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated May 7, 2004, Claimant advised that the claims against Respondent Rittenhouse Financial Services, Inc. are voluntarily dismissed.

By letter dated May 10, 2004, Claimant advised that the claims against Respondent Roxbury Capital Management LLC are voluntarily dismissed.

By letter dated October 6, 2004, Claimant advised that the claims against Respondent Nicholas-Applegate Capital are not being pursued.

By letter dated November 1, 2004, Claimant advised that the claims against Respondent Navellier & Associates, Inc. are not being pursued.

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 (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter are hereby dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Larry K. Wetterschneider's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Larry K. Wetterschneider must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. 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.
4. 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, not specifically awarded or otherwise provided for above.

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 = \$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(s) is RBC Dain Rauscher Inc.

Member surcharge	\$	1,700.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	2,750.00
Total Member Fees	\$	5,200.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s), February 3-6, 2004 adjournment requested by Claimant	= \$1,125.00
Hearing Date(s), November 8-11, 2004 adjournment requested by Respondents RBC Dain Rauscher Inc., Larry K. Wetterschneider and Richard E. Mundinger	= \$1,125.00
Hearing Date(s), January 24-27, 2005 adjournment requested by Respondent Mundinger	= \$1,125.00

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:

3 Pre-hearing session(s) with Panel	x	1,125.00	\$	3,375.00
June 13, 2003	1	session		
May 11, 2004	1	session		

6 Hearing sessions	November 9, 2004	1 session		
		x	1,125.00	\$ 6,750.00
	May 9, 2005	2 sessions		
	May 10, 2005	2 sessions		
	May 11, 2005	2 sessions		
Total Forum Fees				\$ 10,125.00

The Arbitration Panel has assessed \$5,062.50 of the forum fees to Leilah D. Schou.
The Arbitration Panel has assessed \$2,531.25 of the forum fees to RBC Dain Rauscher Inc.
The Arbitration Panel has assessed \$2,531.25 of the forum fees to Richard E. Munding.

Fee Summary

Claimant, Leilah D. Schou, is liable for:

Initial Filing Fee	= \$	300.00
Adjournment Fee	= \$	1,125.00
<u>Forum Fees</u>	= \$	5,062.50
Total Fees	= \$	6,487.50
<u>Less payments</u>	= \$	-1,425.00
Balance Due NASD Dispute Resolution	= \$	5,062.50

Respondent, RBC Dain Rauscher Inc., is liable for:

Member Fees	= \$	5,200.00
<u>Forum Fees</u>	= \$	2,531.25
Total Fees	= \$	7,731.25
<u>Less payments</u>	= \$	-5,200.00
Balance Due NASD Dispute Resolution	= \$	2,531.25

Respondent, Richard E. Munding, is liable for:

Adjournment Fee	= \$	1,125.00
<u>Forum Fees</u>	= \$	2,531.25
Total Fees	= \$	3,656.25
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	3,656.25

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Respondents, RBC Dain Rauscher Inc., Larry K. Wetterschneider, and Richard E. Munding, are jointly and severally liable for:

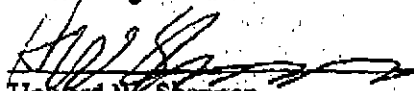
Adjournment Fee	= \$	1,125.00
Total Fees	= \$	1,125.00
Less payments	= \$	-1,125.00
Balance Due NASD Dispute Resolution	= \$	0.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Howard W. Shannon - Public Arbitrator, Presiding Chair
Francis Eugene Brown - Public Arbitrator
Sarah Catherine Whitmore - Non-Public Arbitrator

Concurring Arbitrators:


Howard W. Shannon
Public Arbitrator, Presiding Chair


Signature Date

Francis Eugene Brown
Public Arbitrator

Signature Date

Sarah Catherine Whitmore
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

12/21/05 WED 10:13 FAX

NASD REGULATION

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Respondents, RBC Dain Rauscher Inc., Larry K. Wetterschneider, and Richard E. Mundinger,
are jointly and severally liable for:

Adjournment Fee	= \$	1,125.00
Total Fees	= \$	1,125.00
Less payments	= \$	-1,125.00
Balance Due NASD Dispute Resolution	= \$	0.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Howard W. Shannon - Public Arbitrator, Presiding Chair

Francis Eugene Brown - Public Arbitrator

Sarah Catherine Whitmore - Non-Public Arbitrator

Concurring Arbitrators:

Howard W. Shannon
Public Arbitrator, Presiding Chair

Signature Date


Francis Eugene Brown
Public Arbitrator

12-22-05
Signature Date

Sarah Catherine Whitmore
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Respondents, RBC Dain Rauscher Inc., Larry K. Wetterschneider, and Richard E. Munding, are jointly and severally liable for:

Adjournment Fee	= \$	1,125.00
Total Fees	= \$	1,125.00
<u>Less payments</u>	= \$	-1,125.00
Balance Due NASD Dispute Resolution	= \$	0.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Howard W. Shannon - Public Arbitrator, Presiding Chair
Francis Eugene Brown - Public Arbitrator
Sarah Catherine Whitmore - Non-Public Arbitrator


Concurring Arbitrators:

Howard W. Shannon
Public Arbitrator, Presiding Chair

Signature Date

Francis Eugene Brown
Public Arbitrator

Signature Date



Sarah Catherine Whitmore
Non-Public Arbitrator

12-21-05
Signature Date

Date of Service (For NASD office use only)