
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants

Jeff F. Clarke and Kristy K. Clarke

Case Number: 02-07122

Name of the Respondents

Hearing Site: Omaha, Nebraska

RBC Dain Rauscher, Inc. and Scott Von Minden

REPRESENTATION OF PARTIES

Claimants, Jeff F. Clarke and Kristy K. Clarke, "Claimants" were represented by Rodney K. Vincent, Esq., Vincent Law Office, Lincoln, Nebraska.

Respondents, RBC Dain Rauscher, Inc. and Scott Von Minden, "Respondents" were represented by Jonathan M. Harris, Esq. and Sandra S. Smalley, Esq., Lindquist & Vennum P.L.L.P., Minneapolis, Minnesota.

CASE INFORMATION

The Statement of Claim was filed on or about November 25, 2002. The Claimants' Submission Agreement was signed on or about November 22, 2002. Claimants' Response to the Statement of Answer was filed on or about July 31, 2003. On August 25, 2003, the Claimants filed a response to the Respondents' Motion to Strike. Claimants' Pre-hearing Memorandum was filed on or about September 10, 2003. On November 6, 2003, Claimants filed a Motion in Limine. On November 6, 2003, the Claimants filed a Response to the Respondents' Motion to Compel.

The Statement of Answer was filed Respondents RBC Dain Rauscher, Inc. and Scott Von Minden on or about January 21, 2003. The Submission Agreement of Respondent RBC Dain Rauscher, Inc. was signed on or about December 9, 2002. The Submission Agreement of Respondent Scott Von Minden was filed on or about December 9, 2002. On August 23, 2003, Respondents filed a Motion to Strike Claimants' Response to Respondents' Answer and Affirmative Defenses. Respondents' Pre-hearing Brief was filed on or about September 15, 2003. On November 11, 2003, the Respondents filed a Response to the Motion in Limine. On November 5, 2003, Respondents filed a Motion to Compel. On November 11, 2003, the Respondents filed a Reply to Claimants' Response to Respondent's Motion to Compel.

CASE SUMMARY

Claimants asserted the following causes of action: Violation of the Anti-Fraud provisions of the securities laws of the U.S. and the State of Nebraska; common law fraud; breach of fiduciary duty; common law negligence; including violation of duties owed the Claimant arising out of breach of the NASD's Rules of Fair Practice and applicable SEC Rules; breach of contract; and failure to supervise. The causes of action relate to the purchases of WorldCom, Inc. ("WCOM"), Enron Corporation ("ENE"), Compaq Computer Corp. ("CPQ"), ADC Telecommunications, Inc. ("ADCT"), Ericsson L.M. Tel. Co. ("ERICY"), TriPath Technology, Inc. ("TRPH"), and IBM, Inc. and other securities.

Claimants specifically stated the following:

In September 2000, Respondent Von Minden embarked on a trading spree in the Claimants' account wherein he recommended excessive and unsuitable transactions in the account, committed other frauds by conduct, used excessive margin loans, and made false and misleading statements as he recommended and effected market investment strategies and investment transactions that were financially dangerous to the Claimants and were unsuitable for the Claimants' investment objective.

Unless specifically admitted in their Answer, Respondents RBC Dain Rauscher, Inc. and Scott Von Minden denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim against Respondents upon which relief may be granted; under the principles of waiver, laches, and estoppel, Claimants are barred from pursuing a claim for relief against the Respondents; Claimants failed to mitigate against losses; Claimants failed to cite a single fraudulent or deceptive act by either of the Respondents that would support such a claim; the Respondents were not negligent with regard to the investment recommendations made to Claimants; the Respondents did not breach any fiduciary duties owed to Claimants; no private cause of action lies for a violation of a self regulatory agency rule; Claimants knew the risks associated with the transactions at issue, and they knowingly, willing and voluntarily assumed the risks associated with investing in the stock market, acquiring shares of high-tech and telecommunications companies and trading on margin; Claimants are precluded from recovery herein since the losses sustained by them were direct and proximate result of market events outside the control of the Respondents; Even if, arguendo, Respondents were negligent in some fashion, a claim that they deny, Claimants' contributory negligence vitiates this negligence; and there is no evidence to support an allegation of a failure to supervise.

RELIEF REQUESTED

Claimants Jeff F. Clarke and Kristy K. Clarke requested:

Compensatory Damages	\$287,278.00
Punitive Damages	\$unspecified
Interest	\$unspecified
Attorneys' Fees	\$unspecified

Costs

\$unspecified

Respondents RBC Dain Rauscher, Inc. and Scott Von Minden requested:

Costs

\$unspecified

Non-Monetary Relief: Respondents requested that the claims asserted against them be denied in their entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On September 11, 2003, Arbitrator Stephen E. Gehring, Esq. withdrew from the Panel and Eric T. Williams, Esq. was appointed as his replacement.

On October 16, 2003, the Panel denied the Respondents' Motion to Strike.

Oral arguments by telephone were held on November 12, 2003 to hear oral arguments on the Claimants' Motion in Limine and Respondents' Motion to Compel. Chairperson Knudsen made the following ruling:

1. Claimants' counsel shall provide for Respondent the affirmation by the Claimants provided for in Paragraph II(c) of the Discovery Guide that the documents requested do not exist after a good faith search has been conducted. That originals of documents previously provided by Claimant to Respondent shall be brought to the hearing as well as any original documents that are newly discovered by Claimant in making the search provided for in Paragraph II(c).
2. Claimants' Motion in Limine is denied.

On November 13, 2003, the Respondents filed a Motion to allow one of their witnesses permission to testify telephonically. The Claimants did not oppose the Motion. The Panel granted the Motion.

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 evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted in this matter shall be and are hereby denied.

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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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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 party.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators 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 12, 2003 1 session	

One (1) Pre-hearing sessions with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: June 17, 2003 1 session	

Eleven (11) Hearing sessions x \$1,125.00	= \$12,375.00
Hearing Dates: November 17, 2003 2 sessions	
November 18, 2003 2 sessions	
November 19, 2003 2 sessions	
November 20, 2003 3 sessions	
November 21, 2003 2 sessions	

Total Forum Fees = \$13,950.00

The Panel has assessed \$6,975.00 of the forum fees, jointly and severally, to Jeff F. Clarke and Kristy K. Clarke.

The Panel has assessed \$6,975.00 of the forum fees, jointly and severally, to RBC Dain Rauscher Inc. and Scott Von Minden.

Fee Summary

Claimants, Jeff F. Clarke and Kristy K. Clarke, are jointly and severally liable for:

Filing Fee	= \$ 300.00
Forum Fees	= \$6,975.00
<hr/> Total Fees	<hr/> = \$7,275.00
Less Payments	= \$1,495.00
Balance Due NASD Dispute Resolution	= \$5,780.00

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

Member Fees	= \$5,200.00
<hr/> Total Fees	<hr/> = \$5,200.00
Less payments	= \$5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, RBC Dain Rauscher, Inc. and Scott Von Minden, are jointly and severally liable for:

Forum Fees	= \$6,975.00
<hr/> Total Fees	<hr/> = \$ 0.00
Less Payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$6,975.00

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

ARBITRATION PANEL

Richard A. Knudsen - Public Arbitrator, Presiding Chairperson
Eric T. Williams, Esq. - Public
Wayne B. Smith - Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/ Richard A. Knudsen
Richard A. Knudsen
Public Arbitrator, Presiding Chairperson

12/11/03
Signature Date

/s/ Eric T. Williams, Esq.
Eric T. Williams, Esq.
Public Arbitrator

12/08/03
Signature Date

/s/ Wayne B. Smith
Wayne B. Smith
Non-Public Arbitrator

12/08/03
Signature Date

12/11/03
Date of Service (For NASD Dispute Resolution use only)

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Eric T. Williams, Esq. - Public
Wayne B. Smith - Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

12/11/03
Signature Date

Eric T. Williams, Esq.
Public Arbitrator

Signature Date

Wayne B. Smith
Non-Public Arbitrator

Signature Date

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Richard A. Knudsen
Public Arbitrator, Presiding Chairperson

Signature Date


Eric T. Williams, Esq.
Public Arbitrator

8 Dec 03
Signature Date

Wayne B. Smith
Non-Public Arbitrator

Signature Date

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