

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

J. Richard Wittwer, both individually and on behalf of the J. Richard Wittwer IRA and Hazel Wittwer, both individually and on behalf of the Hazel Witter IRA, Claimants v. RBC Dain Rauscher f/k/a Sutro & Co., Respondent

Case Number: 03-01315

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member

REPRESENTATION OF PARTIES

For Claimants:

Christopher L. Thomas, Esq.
La Follette, Johnson, De Hass
Fesler, Silberberg & Ames
Santa Ana, California

For Respondent:

Gilbert Serota, Esq.
Howard Rice Nemerovski
Canady Falk & Rabkin
San Francisco, California

CASE INFORMATION

Statement of Claim filed: February 21, 2003

Claimant J. Richard Wittwer's Uniform Submission Agreement signed: February 2, 2003

Claimant Hazel Wittwer's Uniform Submission Agreement signed: February 3, 2003

Statement of Answer filed by Respondent: April 17, 2003

Respondent's Uniform Submission Agreement signed: March 4, 2003

CASE SUMMARY

Claimants alleged breach of contract, breach of fiduciary duty, unsuitability, fraud, deceit, misrepresentation, omission of material fact, negligence, elder abuse, violation of state law, and failure to supervise. Claimants allegations involved the purchase of an All America Kemper Gateway Elite Variable Annuity for Richard Wittwer's tax deferred independent retirement

account and the purchase of mutual fund B shares in North Track PSE Technology 100 Index Fund for Claimant Hazel Wittwer's account. Claimants' allegations also involved transactions in mutual funds, including but not limited to Kemper Blue Chip Fund, Kemper Technology Fund, Kemper DR Small Cap VFA, and Kemper DRM High Return Fund. In addition, Claimants' allegations involved transactions in other securities, including but not limited to Legg Mason REIT Trust and Public Storage Properties.

Respondent denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested \$263,000.00 in compensatory damages, \$200,000.00 in punitive damages, pre-judgment interest and costs, including attorney's fees.

Respondent requested dismissal of the Claimants' Statement of Claim in its entirety, and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On March 24, 2003, Claimants' and Claimants' 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waivers of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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	= \$ 300.00
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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 RBC Dain Rauscher f/k/a Sutro & Co. is a party and the following fees are assessed:

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

The following adjournment fees are assessed:

January 15-16, 2004, adjournment requested by Claimants	= Waived
April 19-20, 2004 adjournment requested by Respondent	= \$ 1,125.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00 /session	= \$ 1,125.00
Pre-hearing conference: July 24, 2003 1 session	
Five (5) Hearing sessions @ \$1,125.00/session	= \$5,625.00
Hearings: August 18, 2004 2 sessions	
August 19, 2004 2 sessions	
August 20, 2004 1 session	
Total Forum Fees	= \$ 6,750.00

The Panel assessed the entire balance of the forum fees, in the amount of \$6,750.00, jointly and severally to Claimants.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 6,750.00
Total Fees	= \$ 7,050.00
<u>Less payments</u>	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 5,625.00

2. Respondent is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Adjournment Fee</u>	= \$ 1,125.00
Total Fees	= \$ 6,325.00
<u>Less payments</u>	= \$(6,700.00)
Refund due Respondent	= \$ (375.00)

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

<i>Benjamin F. Breslauer</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Charles Chazen</i>	-	<i>Public Arbitrator</i>
<i>Robert Bruce MacDonald</i>	-	<i>Non-Public Arbitrator</i>

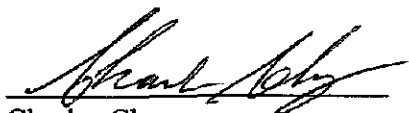
Concurring Arbitrators' Signatures



Benjamin F. Breslauer
Chair, Public Arbitrator

8/20/04

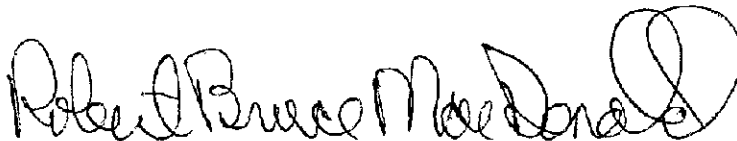
Signature Date



Charles Chazen
Public Arbitrator

8/20/04

Signature Date



Robert Bruce MacDonald
Non-Public Arbitrator

8-20-04

Signature Date

8/20/04

Date of Service