

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

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In the Matter of the Arbitration Between:

William J. Klausman and Barbara J. Klausman, Claimants v. RBC Dain Rauscher, Inc. and Eric P. Niedermeyer, Respondents

Case Number: 03-02673

Hearing Site: Portland, Oregon

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Nature of Dispute: Customers v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

For Claimants:

Richard M. Layne, Esq.  
Layne & Lewis LLP  
Portland, Oregon

For Respondents:

Jonathan M. Harris, Esq.  
Lindquist & Vennum P.L.L.P.  
Minneapolis, Minnesota

**CASE INFORMATION**

Statement of Claim filed: April 7, 2003

Claimants' Joint Uniform Submission Agreement signed: April 7, 2003

Joint Statement of Answer filed by Respondents: July 28, 2003

Respondent RBC Dain Rauscher, Inc.'s Uniform Submission Agreement: None Submitted

Respondent Eric P. Niedermeyer's Uniform Submission Agreement signed: June 3, 2003

**CASE SUMMARY**

In their Statement of Claim, Claimants alleged breach of contract, breach of fiduciary duty, failure to supervise, suitability, negligence, misrepresentations/non-disclosures, omission of facts, and unauthorized trading involving the purchase of various unspecified speculative securities.

Respondents denied the allegations of wrongdoing as set forth in the Claimants' Statement of Claim and set forth various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested rescission damages in the sum of \$200,022.40, pre and post award interest at the legal rate, and costs, including reasonable attorney's fees.

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

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

Respondent RBC Dain Rauscher, Inc. did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

At the hearing, and at the conclusion of the Claimants' case, the Panel denied Respondents' motion to dismiss.

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) The Panel finds, that while there was a lack of communication between the Respondents and the Claimants, including a failure to obtain annual updates, particularly with regard to the changing circumstances of the Claimants, the securities purchased for the Claimants' accounts nevertheless were not unsuitable, given the Claimants' specific commitment to invest a reasonable portion of their assets in equities. Accordingly, 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, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
<b>Total Member Fees</b>	<b>= \$ 5,200.00</b>

#### **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 Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference:      October 2, 2003      1 session	
(6) Hearing sessions @ \$1,125.00/session	= \$6,750.00
Hearings:      April 20, 2004      2 sessions	
April 21, 2004      2 sessions	
April 22, 2004      2 sessions	
<b>Total Forum Fees</b>	<b>= \$7,875.00</b>

The Panel assessed \$7,875.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

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

Initial Filing Fee	= \$ 300.00
<u>Less payments</u>	<u>= \$(1,425.00)</u>
<b>Refund Due Claimants</b>	<b>= \$(1,125.00)</b>
  
2. Respondent RBC Dain Rauscher, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
3. Respondents RBC Dain Rauscher, Inc. and Eric P. Niedermeyer are charged jointly and severally with the following fees and costs:

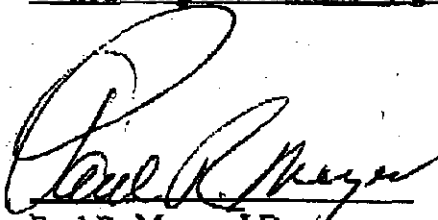
<u>Forum Fee</u>	<u>= \$7,875.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$7,785.00</b>

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

Paul R. Meyer, J.D.	-	Public Arbitrator, Presiding Chair
Elizabeth L. Morrison	-	Public Arbitrator
R. Lee Smith	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Paul R. Meyer, J.D.  
Chair, Public Arbitrator

May 3, 2004  
Signature Date

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Elizabeth L. Morrison  
Public Arbitrator

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

\_\_\_\_\_  
R. Lee Smith  
Non-Public Arbitrator

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

May 3, 2004  
Date of Service

**ARBITRATION PANEL**

Paul R. Meyer, J.D.	-	Public Arbitrator, Presiding Chair
Elizabeth L. Morrison	-	Public Arbitrator
R. Lee Smith	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Paul R. Meyer, J.D.  
Chair, Public Arbitrator

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Signature Date

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Elizabeth L. Morrison  
Public Arbitrator

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5/3/04  
Signature Date

\_\_\_\_\_  
R. Lee Smith  
Non-Public Arbitrator

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

\_\_\_\_\_  
MAY 3, 2004  
Date of Service

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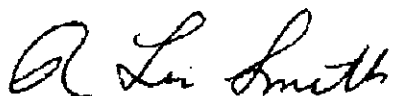
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Paul R. Meyer, J.D.  
Chair, Public Arbitrator

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Signature Date

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Elizabeth L. Morrison  
Public Arbitrator

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



R. Lee Smith  
Non-Public Arbitrator

4-29-04  
Signature Date

May 3, 2004  
Date of Service