

**STIPULATED AWARD
NASD Dispute Resolution**

In the Matter of the Arbitration Between

Name of Claimant

TOMMY G. MURPHY

and

Case Number: 03-03744
Hearing Site: Houston, Texas

Names of Respondents

**RBC DAIN RAUSCHER, INC.,
HENRY PATRICK CRAIG,
PHILIP JEFFREY BROOKS and
DAVID ALLEN SHELLEY**

NATURE OF CASE

Customer v. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Tommy G. Murphy ("**Claimant**") was represented by Andrew Mytelka, Esq., and Steve Windsor, Esq., Greer, Herz & Adams, L.L.P., Galveston, Texas.

RBC Dain Rauscher, Inc. ("**RBC Dain**"), Henry Patrick Craig ("**Craig**") and Philip Jeffrey Brooks ("**Brooks**"), were represented by Bruce W. Collins, Esq., and C. Shawn Cleveland, Esq., Carrington, Coleman, Sloman & Blumenthal, L.L.P., Dallas, Texas.

David Allen Shelley ("**Shelley**"), of Farmersville, Texas, did not make an appearance in this matter.

CASE INFORMATION

The Statement of Claim was filed on or about May 16, 2003. The Submission Agreement of Claimant, Tommy G. Murphy, was signed on or about May 16, 2003.

The Statement of Answer was filed jointly by Respondents, RBC Dain Rauscher, Inc., Henry Patrick Craig and Philip Jeffrey Brooks, on or about August 22, 2003. The Submission Agreement of Respondent, RBC Dain Rauscher, Inc., was signed on or about July 15, 2003 by Michael Pysno. The Submission Agreement of Respondent, Henry Patrick Craig, was signed on or about August 21, 2003. The Submission Agreement of Respondent, Philip Jeffrey Brooks, was signed on or about August 21, 2003.

Respondent, Shelley, did not file a Statement of Answer or a Submission Agreement.

An Agreed Motion for Expungement was filed by Respondent Brooks and Claimant on or about December 20, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, negligence, failure to execute, breach of fiduciary duty, churning, suitability, misrepresentations and unauthorized trading, all as more particularly shown in Claimant's Statements of Claim. The causes of action related to Claimant's accounts generally, not to any particular investment. Claimant alleged his damages arose from the investment activity in his accounts at RBC Dain.

Unless specifically admitted in their Answer, Respondents, RBC Dain Rauscher, Inc., Henry Patrick Craig and Philip Jeffrey Brooks, denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claims are barred by the applicable statute of limitations; Claimant fails to state a claim upon which relief can be granted; Claimant, by his words and conduct, has ratified the transactions of which he complains, and has waived, and is estopped from asserting, the claims made by him; Claimant's own conduct was responsible for any damages complained of by him, which must be reduced or denied under Chapter 33 of TEX. CIV. PRAC. & REM. CODE (Vernon 1997); Claimant failed to mitigate his damages; any recovery of punitive damage would violate the U.S. and Texas Constitutions; and any recovery of punitive damages is limited by Texas Civil Practice & Remedies Code § 41.008 (Vernon Supp. 2003).

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$513,303.00
Punitive/Exemplary Damages	\$250,000.00
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents, RBC Dain Rauscher, Inc., Craig and Brooks, requested that the claims asserted against them be denied in their entirety, that they be awarded any relief to which they are justly entitled, including expungement for Respondent Brooks.

OTHER ISSUES CONSIDERED & DECIDED

The parties have settled this matter, and have agreed as part of that settlement to a

dismissal of this arbitration with prejudice and to cooperate in obtaining an expungement of any reference to this claim and arbitration from Respondent, Philip Jeffrey Brooks', records in the NASD Central Registration Depository, which expungement is warranted by the facts of this matter and is requested in the Agreed Motion for Expungement.

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 parties' submissions and representations, the undersigned arbitrators order as follows:

- 1.) Claimant's claims, each and all, are dismissed with prejudice pursuant to the parties' settlement agreement;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) Upon consideration of the Agreed Motion for Expungement and supporting affidavit, the Panel finds that the motion is meritorious and that Philip Jeffrey Brooks was not involved in any wrongdoing alleged in Claimant's Original and Amended Statements of Claim, the Statements of Claim were clearly erroneous to the extent they implied any wrongdoing by Mr. Brooks, and the Statements of Claim were false to the extent they implied any wrongdoing by Mr. Brooks;
- 4.) Accordingly, the panel recommends the expungement of all reference to the above captioned arbitration from Respondent, Philip Jeffrey Brooks', registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent, Philip Jeffrey Brooks, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 5.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

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 = \$ 375.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is RBC Dain Rauscher, Inc.

Member surcharge = \$ 2,250.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 4,000.00

Adjournment Fees

Adjournments granted during these proceedings:

8/3-6/2004, Hearing Dates, adjournment by RBC Dain Rauscher, Inc. = \$ 1,200.00

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 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: July 9, 2004 1 session

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00

Pre-hearing conference: December 29, 2003 1 session

Total Forum Fees = \$ 1,650.00

The parties have agreed to pay forum fees as follows:

Respondent, RBC Dain Rauscher, Inc., shall pay \$1,650.00.

Fee Summary

Claimant, Tommy G. Murphy, is liable for:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$1,575.00
Refund Due to Claimant	= \$1,200.00

Respondent, RBC Dain Rauscher, is liable for:

Member Fees	= \$7,000.00
Adjournment Fee	= \$1,200.00
Forum Fees	= \$1,650.00
Total Fees	= \$9,850.00
Less payments	= \$7,000.00
Balance Due NASD Dispute Resolution	= \$2,850.00

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

ARBITRATION PANEL

Philip I. McConnell - Public Arbitrator, Presiding Chair

Patricia R. Lykos - Public Arbitrator

James R. Augustine - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Philip I. McConnell
Philip I. McConnell
Public Arbitrator, Presiding Chair

December 23, 2004
Signature Date

Patricia R. Lykos
Patricia R. Lykos
Public Arbitrator

Signature Date

/s/ James R. Augustine
James R. Augustine
Non-Public Arbitrator

December 23, 2004
Signature Date

December 29, 2004
Date of Service (For NASD office use only)

Fee Summary

Claimant, Tommy G. Murphy, is liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$1,575.00
<u>Refund Due to Claimant</u>	= \$1,200.00

Respondent, RBC Dain Rauscher, is liable for:

<u>Member Fees</u>	= \$7,000.00
<u>Adjudgment Fee</u>	= \$1,200.00

<u>Forum Fees</u>	= \$1,650.00
<u>Total Fees</u>	= \$9,850.00
<u>Less payments</u>	= \$7,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$2,850.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10930(g) of the Code.

ARBITRATION PANEL

Philip I. McConnell - Public Arbitrator, Presiding Chair
Patricia R. Lykos - Public Arbitrator
James R. Augustine - Non-Public Arbitrator

Concurring Arbitrators:

Philip I. McConnell
Philip I. McConnell
Public Arbitrator, Presiding Chair

12-23-04
Signature Date

Patricia R. Lykos
Patricia R. Lykos
Public Arbitrator

Signature Date

James R. Augustine
James R. Augustine
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

Fee Summary

Claimant, Tommy G. Murphy, is liable for:

<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$1,575.00
<u>Refund Due to Claimant</u>	= \$1,200.00

Respondent, RBC Dain Rauscher, is liable for:

<u>Member Fees</u>	= \$7,000.00
<u>Adjournment Fee</u>	= \$1,200.00
<u>Forum Fees</u>	= \$1,650.00
<u>Total Fees</u>	= \$9,850.00
<u>Less payments</u>	= \$7,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$2,850.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10930(g) of the Code.

ARBITRATION PANEL

Philip I. McConnell - Public Arbitrator, Presiding Chair

Patricia R. Lykos - Public Arbitrator

James R. Augustine - Non-Public Arbitrator

Concurring Arbitrators:

Philip I. McConnell
Public Arbitrator, Presiding Chair

Signature Date

Patricia R. Lykos
Public Arbitrator

Signature Date



James R. Augustine
Non-Public Arbitrator

12/23/2004

Signature Date

Date of Service (For NASD office use only)