

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

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In the Matter of the Arbitration Between: —

Richard Adelstein, Leslie Adelstein, and The Richard and Leslie Adelstein Family LLC,  
Claimants v. RBC Dain Rauscher and Thomas R. Wanne, Respondents

Case Number: 03-03790

Hearing Site: Seattle, Washington

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

**REPRESENTATION OF PARTIES**

For Claimants:

Chris R. Youtz, Esq.  
Sirianni, Youtz, Meier &  
Spoonemore  
Seattle, Washington

For Respondents:

Christian N. Oldman, Esq.  
Lane, Powell, Spears &  
Lubersky  
Seattle, Washington

**CASE INFORMATION**

Statement of Claim filed: May 23, 2003

Claimants' Joint Uniform Submission Agreement signed: November 22, 2002

Joint Statement of Answer filed by Respondents RBC Dain Rauscher and Thomas R. Wanne:  
July 22, 2003

Respondent RBC Dain Rauscher's Uniform Submission Agreement signed: None submitted

Respondent Thomas R. Wanne's Uniform Submission Agreement signed: None submitted

**CASE SUMMARY**

Claimants alleged violation of Securities Act of Washington, failure to supervise, breach of contract, breach of fiduciary duty and violation of Consumer Protection Act. Claimants' allegations involved various technology securities and the improper use of margin.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted affirmative defenses. Respondents requested a dismissal of Claimants' Statement of

Claim in its entirety and an Award expunging any reference to this dispute, complaint and/or this arbitration from Thomas R. Wanne's registration records maintained by the Central Registration Depository ("CRD").

### **RELIEF REQUESTED**

Claimants requested \$2,000,000.00 in actual damages, \$10,000.00 in treble damages, interest and attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, and costs, including attorney's fees.

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

Respondents RBC Dain Rauscher and Thomas R. Wanne did not file with the NASD Dispute Resolution properly executed submission agreements, however, all said Respondents are required to submit to arbitration and having answered the claim, are bound by the determination of the Panel on all issues submitted.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings and the Parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. All claims in this case are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Thomas R. Wanne's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Thomas R. Wanne must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each party is to bear its own costs and expenses, including attorney's fees.
4. All other relief 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	= \$ 500.00
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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, which gave rise to the dispute, claim, or controversy. Accordingly, the member firm RBC Dain Rauscher is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 8,550.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

June 28-July 2, 2004, adjournment requested by Claimants	= waived
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#### **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:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: November 12, 2003 1 session	

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<b>Total Forum Fees</b>	<b>= \$ 1,200.00</b>
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1. The Panel assessed \$ 600.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$ 600.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimants Richard Adelstein, Leslie Adelstein, and The Richard and Leslie Adelstein Family LLC are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 1,100.00
Less payments	= \$( 1,700.00)
<b>Refund Due Claimants</b>	<b>= \$ (600.00)</b>
  
2. Respondent RBC Dain Rauscher is charged with the following fees and costs:

Member Fees	= \$ 8,550.00
Less payments	= \$ (8,550.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
3. Respondents RBC Dain Rauscher and Thomas R. Wanne are charged jointly and severally with the following fees and costs

Forum Fees	= \$ 600.00
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 600.00</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**

Ronald L. Peters, J.D.	Public Arbitrator, Presiding Chair
Carl J. Carlson	Public Arbitrator
Ronald E. Lorentsen	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Ronald L. Peters, J.D.  
Chair, Public Arbitrator

10.4.04  
Signature Date

\_\_\_\_\_  
Ronald E. Lorentsen  
Industry Arbitrator

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

**Dissenting Arbitrator's Signature**

Arbitrator Carl J. Carlson, Esq. dissents with respect to the Panel's recommendation of expungement of this matter from Thomas Wanne's CRD records.

\_\_\_\_\_  
Carl J. Carlson, Esq.  
Public Arbitrator

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

10/5/04  
Date of Service

**ARBITRATION PANEL**

Ronald L. Peters, J.D.	-	Public Arbitrator, Presiding Chair
Carl J. Carlson	-	Public Arbitrator
Ronald E. Lorentsen	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Ronald L. Peters, J.D.  
Chair, Public Arbitrator

Signature Date



Ronald E. Lorentsen  
Industry Arbitrator

9/21/04  
Signature Date

**Dissenting Arbitrator's Signature**

Arbitrator Carl J. Carlson, Esq. dissents with respect to the Panel's recommendation of expungement of this matter from Thomas Wanne's CRD records.

Carl J. Carlson, Esq.  
Public Arbitrator

Signature Date

10/5/04  
Date of Service

**ARBITRATION PANEL**

Ronald L. Peters, J.D.	-	Public Arbitrator, Presiding Chair
Carl J. Carlson	-	Public Arbitrator
Ronald E. Lorentsen	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Ronald L. Peters, J.D.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Ronald E. Lorentsen  
Industry Arbitrator

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

**Dissenting Arbitrator's Signature**

Arbitrator Carl J. Carlson, Esq. dissents with respect to the Panel's recommendation of expungement of this matter from Thomas Wagne's CRD records, *for the reasons stated on Attachment A.*

*Carl J. Carlson*  
\_\_\_\_\_  
Carl J. Carlson, Esq.  
Public Arbitrator

*9-22-04*  
\_\_\_\_\_  
Signature Date

*10/5/04*  
\_\_\_\_\_  
Date of Service

**Attachment A to Stipulated Award**

Allowing registered representatives to routinely expunge records of customer complaints when there is a settlement of those claims deprives the public and the regulators of information which, as a matter of public policy, I believe should be available absent extraordinary circumstances.

The NASD adopted a new Rule 2310, effective for all cases filed after April 12, 2004, prohibiting arbitrators from expunging claims unless they "affirmatively find" that

- (a) the claim, allegation, or information is factually impossible or clearly erroneous;
- (b) the registered person was not involved in the alleged investment-related sales practice. . . .; or
- (c) the claim, allegation, or information is false.

While that rule does not control this pre-April 12, 2004 case, 2004, it does reflect current NASD thinking and is the better policy. In announcing the proposed rule change and soliciting comment, the NASD explained in Notice to Members 01-65:

"Federal and state laws provide for expungement relief under very limited circumstances. In addition, persons may be granted an expungement remedy in a civil action (as a form of equitable relief) when, for example, harm is done to their reputations, or based on other equitable grounds.

Expungement of information from the CRD system also is appropriate in certain circumstances where it is not expressly required by applicable law or by a court order. . . .

Expungement of information from the CRD system is an extraordinary remedy, however, that clearly is not appropriate in all circumstances. In addition, there is a potential for inappropriate use of the expungement process, *particularly where parties have agreed to expunge customer dispute information as a part of a settlement. Both the investing public and regulators have interests in maintaining customer dispute information within the CRD system that may not be considered when two private parties agree to settle a civil suit or arbitration claim and to expunge*



*information relating to that suit or arbitration claim from the CRD system . . .*

. . . NASD Regulation preliminarily has identified three bases that it believes warrant the extraordinary relief of expunging information from the CRD system. They include a finding that (1) factual impossibility or "clear error" exists (e.g., the associated person named in the proceeding did not work for the firm, or worked in a different office, and was named in error); (2) the claim is without legal merit [this basis changed in the final Rule]; or (3) the information on the CRD system is defamatory. . . .

NASD Regulation also generally believes that, before any customer dispute information is expunged, an independent fact finder should make a finding that expungement relief is warranted on one of these three bases. With respect to the second category (i.e., claims that are found to be "without legal merit"), NASD Regulation emphasizes that merely prevailing in an arbitration or court proceeding would not, by itself, justify expungement. A fact finder would be required to make a specific finding that a claim was factually impossible, without legal merit, or defamatory in nature before NASD Regulation would execute any expungement directive." (Emphasis added.)

The allegations in the Statement of Claim are, on their face, colorable. Nothing presented to the Panel suggests that any of the current criteria for expunging from the CRD all record of a customer complaint are satisfied here. Indeed, the circumstances suggest just the opposite: that the Respondents paid to settle the Claimants' claims. If the Claimants were just giving up, without compensation, one would expect to see them simply dismiss their case—not the stipulated dismissal of the sort offered here. No information has been presented to suggest that any extraordinary circumstances are present here, which justifies rewriting history to make it appear that a customer claim which did in fact occur, never happened at all.

It is no protection that the parties must obtain a court order confirming the expungement before it will be effective. Many courts will see this Panel as the experts, and will assume that this Panel has made a considered judgment which should be afforded respect. The NASD states that "an independent fact finder should make a finding that expungement relief is warranted on one of these three bases." That determination has not been made, and therefore I dissent from expunging the record of this customer complaint from the CRD system.