

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

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In the Matter of the Arbitration Between:

Sutro & Co. n/k/a RBC Dain Rauscher, Inc., Claimant v. Ana Blumberg-Markus, Respondent

Ana Blumberg-Markus, Counter-Claimant v. Sutro & Co. n/k/a RBC Dain Rauscher, Inc.,  
Counter-Respondent

Case Number: 03-04382

Hearing Site: Los Angeles, California

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Nature of the Dispute:

Member v. Associated Person

Associated Person v. Member

**REPRESENTATION OF PARTIES**

For Claimant/Counter-Respondent Sutro & Co.  
n/k/a RBC Dain Rauscher, Inc.  
("RBC Dain Rauscher, Inc."):

Kim M. Ruckdaschel-Haley, Esq.  
Lindquist & Vennum P.L.L.P.  
Minneapolis, Minnesota

For Respondent/Counter-Claimant  
Ana Blumberg-Markus ("Ana Blumberg-Markus"):

Moses S. Bardavid, Esq.  
Lee & Bardavid  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: June 11, 2003

RBC Dain Rauscher, Inc.'s Uniform Submission Agreement signed: January 29, 2003

Ana Blumberg-Markus' Statement of Answer and Counterclaim filed: September 8, 2003

RBC Dain Rauscher, Inc.'s Statement of Answer to Counterclaim filed: October 20, 2003

### **CASE SUMMARY**

RBC Dain Rauscher, Inc. alleged breach of three promissory notes executed in connection with three loans by RBC Dain Rauscher, Inc. to Ana Blumberg-Markus.

Ana Blumberg-Markus denied the allegations of wrongdoing set forth in RBC Dain Rauscher, Inc.'s Statement of Claim and filed a Counterclaim alleging that she was unjustly, wrongfully, and constructively terminated.

RBC Dain Rauscher, Inc. denied the allegations of wrongdoing set forth in Ana Blumberg-Markus' Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

RBC Dain Rauscher, Inc. requested \$41,272.42 in compensatory damages, interest at the rate of 3.9% per diem, and costs, including attorney's fees.

Ana Blumberg-Markus requested dismissal of RBC Dain Rauscher, Inc.'s Statement of Claim in its entirety. In her Counterclaim, Ana Blumberg-Markus requested unspecified damages for unjust constructive termination, including loss of commissions, and costs, including attorney's fees, forum fees, filing fees, and expert witness fees.

RBC Dain Rauscher, Inc. requested dismissal of Ana Blumberg-Markus' Counterclaim in its entirety and costs, including attorney's fees.

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

Ana Blumberg-Markus did not file with 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 Arbitrator on all issues submitted.

On March 20, 2006, Ana Blumberg-Markus filed a Motion for Leave to Amend the Complaint Against RBC Dain Rauscher, Inc. On March 22, 2006, the Arbitrator ruled that the motion would be heard and decided at the evidentiary hearing on March 28, 2006. RBC Dain Rauscher, Inc. verbally opposed the motion at the evidentiary hearing. After due deliberation, the Arbitrator denied Ana Blumberg-Markus' Motion for Leave to Amend the Complaint Against RBC Dain Rauscher, Inc.

The parties agreed that a handwritten, signed Award may be entered.

**AWARD**

After considering the pleadings, testimony, and evidence presented at the hearing, the Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Ana Blumberg-Markus is liable to and shall pay RBC Dain Rauscher, Inc. the sum of \$45,819.50 in compensatory damages.
- 2) Ana Blumberg-Markus is liable to and shall pay RBC Dain Rauscher, Inc. interest on \$45,819.50 at the rate of 3.9% per annum, from March 29, 2006 until the date that payment of this Award is made in full.
- 3) Ana Blumberg-Markus is liable to and shall pay RBC Dain Rauscher, Inc. the sum of \$16,000.00 in attorney's fees, pursuant to the terms of the promissory note.
- 4) Ana Blumberg-Markus is liable to and shall pay RBC Dain Rauscher, Inc. \$1,000.00 for reimbursement of the initial claim filing fee.
- 5) Ana Blumberg-Markus' Counterclaim is denied in its entirety.
- 6) Except as awarded above, the parties shall bear their respective costs, including attorney's fees.
- 7) 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	= \$ 1,000.00
Ana Blumberg-Markus' Counterclaim filing fee	= \$ 250.00

#### **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	= \$ 875.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,200.00
<b>Total Member Fees</b>	<b>= \$ 3,825.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

February 16-17, 2006 hearing adjournment requested by Ana Blumberg-Markus	= \$ 450.00
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The Arbitrator assessed \$450.00 of the adjournment fees to Ana Blumberg-Markus.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

February 16-17, 2006 hearing adjournment requested by Ana Blumberg-Markus	= \$ 100.00
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The Arbitrator assessed \$100.00 of the three-day cancellation fees to Ana Blumberg-Markus.

**Forum Fees and Assessments**

The Arbitrator assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A session is any meeting between the parties and the Arbitrator, including a pre-hearing conference with the Arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

3 Pre-hearing conference sessions with a single arbitrator @ \$450.00/session	= \$1,350.00
Pre-hearing conferences: August 23, 2005	1 session
December 14, 2005	1 session
February 15, 2006	1 session

2 Hearing sessions @ \$450.00/session	= \$ 900.00
Hearings: March 28, 2006	2 sessions

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<b>Total Forum Fees</b>	<b>= \$ 2,250.00</b>
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The Arbitrator assessed \$2,250.00 of the forum fees to Ana Blumberg-Markus.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Ana Blumberg-Markus requested 18 photocopies at \$0.50 each:	= \$ 9.00
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**Fee Summary**

1. RBC Dain Rauscher, Inc. is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
<u>Member Fees</u>	= \$ 3,825.00
Total Fees	= \$ 4,825.00
<u>Less payments</u>	= \$(4,075.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 750.00</b>

2. Ana Blumberg-Markus is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 250.00
Adjournment Fee	= \$ 450.00
Three-Day Cancellation Fee	= \$ 100.00
Forum Fees	= \$ 2,250.00
<u>Administrative Costs</u>	= \$ 9.00
Total Fees	= \$ 3,059.00
<u>Less payments</u>	= \$( 0.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,059.00</b>

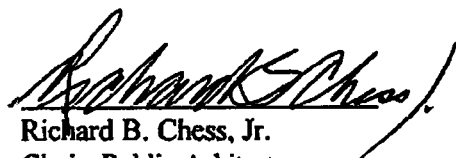
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATOR**

Richard B. Chess, Jr.

Public Arbitrator, Presiding Chair

**Arbitrator's Signature**

  
Richard B. Chess, Jr.  
Chair, Public Arbitrator

  
Signature Date

  
Date of Service

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