

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimants

Dr. D. Ross and Janet E. Halliday

and

03-05680  
Phoenix, Arizona

Name of Respondents

RBC Dain Rauscher Inc.  
Patricia B. Ternes

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

**REPRESENTATION OF PARTIES**

Dr. D. Ross and Janet E. Halliday ("Claimants") were represented by John J. Nicgorski, Esq. and Daniel P. Beeks, Esq., Mohr, Hackett, Pederson, Blakley & Randolph, P.C., Phoenix, Arizona.

RBC Dain Rauscher Inc. ("Respondent RBC Dain") and Patricia B. Ternes ("Respondent Ternes") (collectively as "Respondents") were represented by Jesse B. Simpson, Esq. and Candida M. Ruesga, Esq., Lewis and Roca LLP, Phoenix, Arizona.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 4, 2003. Submission Agreement of Claimants Dr. D. Ross and Janet E. Halliday was signed on April 24, 2003.

Statement of Answer was filed by Respondents RBC Dain Rauscher Inc. and Patricia B. Ternes on or about October 7, 2003. Submission Agreement of Respondent RBC Dain Rauscher Inc. was signed on August 13, 2003. Submission Agreement of Respondent Patricia B. Ternes was signed on September 27, 2003.

**CASE SUMMARY**

Claimants alleged that:

During the period that Claimants' account was managed and maintained by respondents, Respondents engaged in a series of abusive actions in contravention of legal industry standards including:

- a) Recommending, directing and effecting the purchase of unsuitable and speculative securities in Claimants' account;
- b) Misrepresenting and failing to disclose material facts to Claimants regarding the securities recommended to Claimants and the investment strategies employed by Respondents; and
- c) Failure to supervise Patricia B. Ternes.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated

When Claimants first met Ms. Ternes and transferred their accounts to RBC Dain, they already had a portfolio of stocks and equity mutual funds, some of which would be considered aggressive investments. When they signed new account documents and answered questions for the investor Profile Questionnaire, Claimants indicated that they wanted "growth, aggressive growth, [and] speculation," and were willing to be aggressive in achieving these objectives. At no time did they tell Ms. Ternes that they were "conservative investors" interested only in protecting their principal. To the contrary, they were equity investors from the outset who had benefited greatly from the bull market of the 1990s and wanted to continue their portfolios' focus on the equity markets.

#### **RELIEF REQUESTED**

Claimants requested the following relief:

- a) Judgment against Respondents for compensatory damages in the amount of \$856,420.77;
- b) Judgment against Respondents for lost profits/loss of opportunity;
- c) Judgment against Respondents for punitive damages in the amount the arbitrators deem appropriate to deter the Respondents from future acts or misconduct such as those giving rise to this claim;
- d) For pre and post-award interest at the maximum rate allowed by law;
- e) For all claimants' costs, expenses and disbursements, including reasonable attorneys' fees, in pursuing this claim pursuant to Rule 10330, NASD, A.R.S. §44-2002, and A.R.S. §12-341.01; and
- f) For such other relief as the panel deems just and proper.

Respondents requested that the claims asserted against them be dismissed in their entirety and that all costs be assessed against Claimants.

#### **OTHER ISSUES CONSIDERED & DECIDED**

At the conclusion of Claimants' presentation of their case, Respondents asserted a Motion for Directed Verdict. Initially, the Motion was denied. Respondents reasserted the Motion after

presenting testimony of Respondent Ternes. After considering the evidence presented, the pleadings and the arguments presented on behalf of the parties, the undersigned arbitrators granted the Motion.

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 pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents' Motion for Directed Verdict is granted on all claims. The Panel further hereby finds that the claims in this matter are without factual basis. The Panel hereby orders that any record or notation of the claim in this matter shall be expunged from Respondent Ternes' records at the Central Registration Depository and her Form U-4.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Patricia B. Ternes' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Patricia B. Ternes must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

### **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
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### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is RBC Dain Rauscher Inc.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	7,000.00

### 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

1 Pre-hearing session(s) with Panel	x	1,200.00	\$	1,200.00
January 26, 2004	1 session			
8 Hearing sessions	x	1,200.00	\$	9,600.00
October 18, 2004	2 sessions			
October 19, 2004	2 sessions			
October 20, 2004	2 sessions			
October 21, 2004	2 sessions			
Total Forum Fees		Total Forum Fees	\$	10,800.00

The Arbitration Panel has assessed \$5,400.00 of the forum fees to Dr. D. Ross and Janet E. Halliday. The Arbitration Panel has assessed \$5,400.00 of the forum fees jointly and severally to RBC Dain Rauscher Inc. and Patricia B. Ternes.

### Fee Summary

Claimants, Dr. D. Ross and Janet E. Halliday shall be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	5,400.00
Total Fees	= \$	5,775.00
<u>Less payments</u>	= \$	-1,575.00
Balance Due NASD Dispute Resolution	= \$	4,200.00

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Respondent, RBC Dain Rauscher Inc., shall be and hereby is liable for:

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
<u>Less payments</u>	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, RBC Dain Rauscher Inc. and Patricia B. Ternee, shall be and hereby are jointly and severally liable for:

Forum Fees	= \$	5,400.00
Total Fees	= \$	5,400.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	5,400.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

David B. Stocker, Esq. - Public Arbitrator, Presiding Chair

Robert S. Mautner, Esq. - Public Arbitrator

Anne Floyd Cavanagh - Non-Public Arbitrator

  
Concurring Arbitrators:

David B. Stocker, Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date

Robert S. Mautner, Esq.  
Public Arbitrator

Signature Date

Anne Floyd Cavanagh  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

10/27/2004 14:50 FAX

NASD

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Respondent, RBC Dain Rauscher Inc., shall be and hereby is liable for:

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
Less payments	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, RBC Dain Rauscher Inc. and Patricia B. Ternes, shall be and hereby are jointly and severally liable for:

Forum Fees	= \$	5,400.00
Total Fees	= \$	5,400.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	5,400.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

David B. Stocker, Esq. - Public Arbitrator, Presiding Chair  
Robert S. Mautner, Esq. - Public Arbitrator  
Anne Floyd Cavanagh - Non-Public Arbitrator

Concurring Arbitrators:

David B. Stocker, Esq.  
Public Arbitrator, Presiding Chair

Robert S. Mautner, Esq.  
Robert S. Mautner, Esq.  
Public Arbitrator

Signature Date

Oct. 31, 2004  
Signature Date

Anne Floyd Cavanagh  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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NASD REGULATION

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Respondent, RBC Dain Rauscher Inc., shall be and hereby is liable for:

Member Fees	= \$	7,000.00
Total Fees	= \$	7,000.00
Less payments	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, RBC Dain Rauscher Inc. and Patricia B. Ternes, shall be and hereby are jointly and severally liable for:

Forum Fees	= \$	5,400.00
Total Fees	= \$	5,400.00
Less payments	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	5,400.00

All balances are due to NASD Dispute Resolution

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 Robert S. Mautner, Esq. - Public Arbitrator  
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Concurring Arbitrators:

\_\_\_\_\_  
 David B. Stocker, Esq.  
 Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
 Robert S. Mautner, Esq.  
 Public Arbitrator

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

Anne F. Cavanagh  
 Anne Floyd Cavanagh  
 Non-Public Arbitrator

10/28/2004  
 Signature Date

\_\_\_\_\_  
 Date of Service (For NASD office use only)