

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

The Rt. Rev. Victor M. Rivera and Barbara Rivera, individually, and Maria P. Rivera, as Successor Trustee of the Victor and Barbara Rivera Living Trust U/A dated 05/31/01, Claimants
v. RBC Dain Rauscher Inc. and James Hutton, Respondents

Case Number: 03-06068

Hearing Site: San Francisco, California

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

REPRESENTATION OF PARTIES

For Claimants:

Scott R. Shewan, Esq.
Born, Pape & Shewan, L.L.P.
Clovis, California

For Respondents:

Abe Lampart, Esq.
Law Offices of Abe Lampart,
P.C.
San Francisco, California

CASE INFORMATION

Statement of Claim filed: August 20, 2003

Claimants The Rt. Rev. Victor M. Rivera and Barbara Rivera's Joint Uniform Submission Agreement signed: not dated

Claimant Victor and Barbara Rivera Living Trust U/A dated 05/31/01's Joint Uniform Submission Agreement signed: May 1, 2003

Joint Statement of Answer filed by Respondents: December 1, 2003

Respondent RBC Dain Rauscher, Inc.'s Uniform Submission Agreement signed: September 3, 2003

Respondent James Hutton's Uniform Submission Agreement signed: November 26, 2003

CASE SUMMARY

Claimants alleged breach of fiduciary duty, unsuitability, failure to diversify, and negligence. Claimants' allegations involved, in part, Goldman Sachs Trust Growth Strategy Portfolio Class C, John Hancock Core Equity Fund Class C, SunAmerica Style Select Series Focus Portfolio Class II, Goldman Sachs Internet Tollkeeper Fund Class C, and Van Kampen Focus Portfolio Unit 235, a unit investment trust.

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

RELIEF REQUESTED

Claimants requested approximately \$217,563.00 in compensatory damages and attorney's fees.

Respondents requested dismissal of Claimants' Statement of Claim in its entirety, an award recommending expungement of all references to this claim from Respondent James Hutton's CRD records, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On December 8, 2003, Claimant Maria P. Rivera, as Successor Trustee of the Victor and Barbara Rivera Living Trust U/A dated 05/31/01, and her counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 15, 2003, Claimants The Rt. Rev. Victor M. Rivera and Barbara Rivera, and their counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 11, 2003, Respondent James Sutton signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On January 5, 2004 (inadvertently dated 2003), Respondent RBC Dain Rauscher Inc. and its counsel signed a Waiver Agreement on Respondent RBC Dain Rauscher Inc.'s behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On May 6, 2005, Respondents submitted the parties' stipulated dismissal of Claimants' claims with prejudice and request for expungement of all references to this matter from Respondent James Hutton's registration records maintained by the NASD Central Registration Depository ("CRD"). On June 1, 2005, the Panel deliberated in executive session and decided to request written briefs from the parties and oral argument in support of expungement. On June 20, 2005, Respondents submitted such briefs and, then, on June 21, 2005, Respondents submitted Claimants' notice of non-opposition to the expungement request. On July 6, 2005, the Panel held a telephonic conference with the parties and heard oral argument in support of expungement. After due deliberation, the Panel decided to grant the expungement request.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

AWARD

After considering the Stipulation, pleadings, and oral argument, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' claims are dismissed with prejudice.
- 2) The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent James Hutton'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 James Hutton must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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>	= \$2,750.00
Total Member Fees	= \$5,200.00

Adjournment Fees

The following adjournment fees are assessed:

January 25-28, 2005 Hearing Dates, adjournment requested by Claimants	= \$1,125.00
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The Panel assessed the \$1,125.00 adjournment fee jointly and severally to Claimants.

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 Chair or the parties and the Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$2,250.00
Pre-hearing conferences: January 20, 2005 1 session	
July 6, 2005 1 session	

Total Forum Fees	= \$2,250.00
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1. The Panel assessed \$562.50 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$562.50 of the forum fees jointly and severally to Respondents.
3. Respondents agreed to pay the \$1,125.00 forum fee in connection with the July 6, 2005, teleconference on expungement.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 1,987.50
<u>Less payments</u>	<u>= \$(2,550.00)</u>
Refund Due Claimants	= \$ (562.50)

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>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents RBC Dain Rauscher Inc. and James Hutton are charged jointly and severally with the following fees and costs:


<u>Forum Fees</u>	<u>= \$1,687.50</u>
Balance Due NASD Dispute Resolution	= \$1,687.50

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

Jonathan H. Krotinger	-	Public Arbitrator, Presiding Chair
Herbert Liberman	-	Public Arbitrator
John E. Molnar	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Jonathan H. Krotinger
Chair, Public Arbitrator

7/11/05
Signature Date

Herbert Liberman
Public Arbitrator

Signature Date

John E. Molnar
Non-Public Arbitrator

Signature Date

7/13/05
Date of Service

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Herbert Liberman	-	Public Arbitrator
John E. Molnar	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Jonathan H. Krotinger
Chair, Public Arbitrator

Signature Date

Herbert Liberman
Public Arbitrator

Signature Date



John E. Molnar
Non-Public Arbitrator

7/12/05

Signature Date

7/13/05

Date of Service

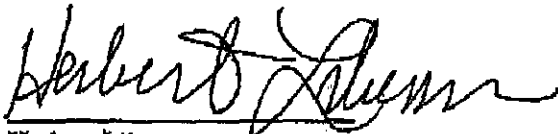
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Chair, Public Arbitrator

Signature Date



Herbert Liberman
Public Arbitrator

7-13-05

Signature Date

John E. Molnar
Non-Public Arbitrator

Signature Date

7/13/05

Date of Service