

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

RBC Dain Rauscher, Inc.

Case Number: 04-00776

Hearing Site: Houston, Texas

v.

Name of Respondent

David R. Schnitzer

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**NATURE OF CASE**

Member Firm v. Associated Person

**REPRESENTATION OF PARTIES**

RBC Dain Rauscher, Inc. ("Claimant") was represented by Jonathan M. Harris, Esq., Sandra S. Smalley, Esq., and Christopher A. Grgurich, Esq., Lindquist & Vennum, P.L.L.P., Minneapolis, Minnesota.

David R. Schnitzer ("Respondent") was represented by Leonard J. Meyer, Esq., and Nelson S. Ebaugh, Esq., Zimmerman, Axelrad, Meyer, Stern & Wise, P.C., Houston, Texas.

**CASE INFORMATION**

The Claimant's Statement of Claim was filed on or about January 22, 2004. The Submission Agreement of Claimant was signed on or about January 22, 2004.

The Statement of Answer for Respondent was filed on or about March 31, 2004. The Submission Agreement of Respondent was signed on or about March 31, 2004.

**CASE SUMMARY**

Claimant asserted the following cause of action: failure to repay promissory note. RBC Dain Rauscher, Inc. initiated this arbitration to collect on a Promissory Note ("Note") executed in connection with a loan by Claimant to David R. Schnitzer.

In his Answer, Respondent denied Claimant's allegation.

**RELIEF REQUESTED**

Claimant requested an Award in the amount of:

|                             |             |
|-----------------------------|-------------|
| Actual/Compensatory Damages | \$59,058.00 |
| Interest                    | Unspecified |
| Attorneys' Fees             | Unspecified |
| Other Costs                 | Unspecified |
| Other Monetary Relief       | Unspecified |

Respondent requested that Claimant's claim be dismissed in its entirety with prejudice, and for other relief the Panel deemed just and proper, including recovery of costs and expenses of the proceeding, attorneys' fees, and interest in the maximum legally available amount.

**OTHER ISSUES CONSIDERED AND DECIDED**

Claimant and Respondent settled this matter and request that the Panel grant the stipulated relief. It is hereby stipulated by Claimant and Respondent, through their undersigned attorneys of record, that Claimant's requested relief shall be granted and Respondent's requested relief shall be denied.

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

**AWARD**

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

- 1) Claimant's requested relief is hereby granted;
- 2) Respondent's requested relief is hereby denied;
- 3) Respondent shall pay to Claimant \$59,058.00 in compensatory damages, the unpaid principal balance of Respondent's Promissory Note;
- 4) Respondent shall pay to Claimant accrued interest on his promissory note in the amount of \$3,669.85;
- 5) Respondent shall pay to Claimant taxes advanced and paid on his behalf by Claimant in the amount of \$13,139.94;
- 6) Respondent shall pay to Claimant its attorneys' fees and costs in the amount of \$15,199.87; and

7) All such other relief requested and not expressly granted is hereby denied.

**FEES**

Pursuant to the Code, the following fees are assessed:

**Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee      = \$ 1,000

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

|                            |                   |
|----------------------------|-------------------|
| Member Surcharge           | = \$ 1,100        |
| Pre-Hearing Process Fee    | = \$ 750          |
| <u>Hearing Process Fee</u> | <u>= \$ 1,700</u> |
| Total Member Fees          | = \$ 3,550        |

**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:

December 6-7, 2004, settled by the parties – NASD was notified on December 3, 2004.

**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. Forum fees associated with these proceedings are:

|   |          |
|---|----------|
| One (1) Pre-hearing conference session with the Chairperson @ \$450/session | = \$ 450 |
| Pre-hearing conference:      October 15, 2004      1 session                |          |

|   |          |
|---|----------|
| One (1) Pre-hearing conference session with the Panel @ \$750/session | = \$ 750 |
| Pre-hearing conference:      June 2, 2004      1 session              |          |

|                         |                   |
|-------------------------|-------------------|
| <u>Total Forum Fees</u> | <u>= \$ 1,200</u> |
|-------------------------|-------------------|

The Arbitration Panel has assessed \$ 600.00 of the forum fees against Claimant.

The Arbitration Panel has assessed \$ 600.00 of the forum fees against Respondent.

Pursuant to Rule 10332(g) of NASD Code of Arbitration Procedures: *Any matter submitted and thereafter settled or withdrawn subsequent to the commencement of the first hearing session, including a pre-hearing conference with an arbitrator, shall be subject to an assessment of forum fees and costs incurred pursuant to Rules 10319, 10321, 10322, and 10326 based on hearing sessions held and scheduled within eight business days after the Association receives notice that the matter has been settled or withdrawn. The arbitrator(s) shall determine by whom such forum fees and costs shall be borne.* As NASD Dispute Resolution received notice of the settlement within eight business days of the first scheduled hearing, \$ 150 of the Claimant's remaining hearing session deposit is retained.

**Fee Summary**

Claimant, RBC Dain Rauscher, Inc., is liable for:

|   |                   |
|---|-------------------|
| Initial Filing Fee                        | = \$ 1,000        |
| Member Fees                               | = \$ 3,550        |
| Three Day Cancellation Fee                | = \$ 150          |
| Hearing Session Deposit Retained          | = \$ 150          |
| <u>Forum Fee</u>                          | <u>= \$ 600</u>   |
| Total Fees                                | = \$ 5,450        |
| <u>Less payments</u>                      | <u>= \$ 5,300</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 150          |

Respondent, Schnitzer, is liable for:

|   |                 |
|---|-----------------|
| Three Day Cancellation Fee                | = \$ 150        |
| <u>Forum Fees</u>                         | <u>= \$ 600</u> |
| Total Fees                                | = \$ 750        |
| <u>Less Payments</u>                      | <u>= \$ 0</u>   |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 750        |

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

**ARBITRATION PANEL**

Eli Bensky, Non-Public Arbitrator, Presiding Chair  
Robert E. Otto, Non-Public Arbitrator  
Karen Settle Newton, Non-Public Arbitrator

### Concurring Arbitrators' Signatures

/s/ Eli Bensky  
Eli Bensky  
Presiding Chair, Non-Public Arbitrator

December 20, 2004  
Signature Date

/s/ Robert E. Otto  
Robert E. Otto  
Non-Public Arbitrator

December 20, 2004  
Signature Date

**Karen Settle Newton**  
Non-Public Arbitrator

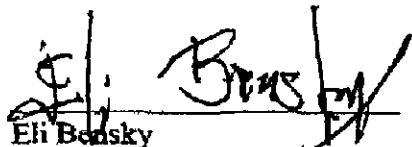
**Signature Date**

December 20, 2004  
Date of Service

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Robert E. Otto, Non-Public Arbitrator  
Karen Settle Newton, Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Eli Bensky  
Presiding Chair, Non-Public Arbitrator

12/20/04  
Signature Date

Robert E. Otto  
Non-Public Arbitrator

Signature Date

Karen Settle Newton  
Non-Public Arbitrator

Signature Date

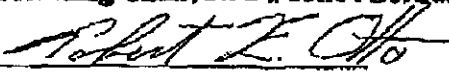
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Non-Public Arbitrator

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NASD Dispute Resolution  
Arbitration No. 04-00776  
Stipulated Award Page 5 of 5

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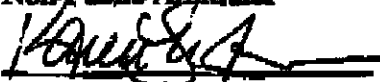
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Presiding Chair, Non-Public Arbitrator

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Signature Date

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Robert E. Otto  
Non-Public Arbitrator

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

  
\_\_\_\_\_  
Karen Settle Newton  
Non-Public Arbitrator

1/4/2005  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service