

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-00873

Susan M. Giffin

Names of the Respondents

Hearing Site: Richmond, Virginia

RBC Dain Rauscher Inc.

Henry R. Miller, IV

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

**REPRESENTATION OF PARTIES**

Claimant, Susan M. Giffin, hereinafter referred to as "Claimant", was represented by Joseph W. Kaestner, Esq., Kaestner and Associates, P.C., Richmond, Virginia.

Respondents, RBC Dain Rauscher, Inc. ("RBC") and Henry R. Miller, IV ("Miller"), hereinafter collectively referred to as "Respondents", were represented by Jeffrey P. Newman, Esq., Davidson & Grannum, LLP, North Alclark, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on February 6, 2004.

Claimant signed the Uniform Submission Agreement on January 21, 2004.

Statement of Answer filed by Respondents on April 30, 2004.

Respondent Miller signed the Uniform Submission Agreement on April 27, 2004.

Respondent RBC did not file a Uniform Submission Agreement with NASD.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: suitability, manipulative and deceptive device under NASD rules, common law constructive fraud, negligence, failure to supervise, and *respondeat superior*. The causes of action relate to the purchase and sale of mutual funds and stocks.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted, failure to mitigate damages, assumption of risk, waiver, ratification, estoppel, laches, contributory negligence, lack of causation, breach of contract, and the claims are barred by the applicable statute of limitations.

### RELIEF REQUESTED

Claimant in her Statement of Claim requested:

Compensatory Damages	\$ 75,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that the statement of claim be dismissed in its entirety, an award of costs be assessed against the Claimant, and expungement of this matter from Respondent Miller's Central Registration Depository (CRD) record.

### OTHER ISSUES CONSIDERED AND DECIDED

Respondent RBC did not file with NASD Dispute Resolution, a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and, having answered the claim and submitted this stipulated award is bound by the determination of the Panel on all issues submitted.

Prior to the hearing, the Parties fully and finally settled all claims by and between them. Therefore, the Parties submit this Stipulated Award to the Panel for its consideration and request that it be entered.

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

### AWARD

Pursuant to the above, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The parties have entered into a confidential settlement agreement;
2. The Claimant's withdrawal of her claim is accepted and Respondents are dismissed from this matter with prejudice;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Miller's 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 Miller must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. The parties shall bear their respective costs, including attorneys' fees, except as Fees are

specifically addressed below; and

5. Any and all relief not specifically addressed herein is denied in its entirety.

### 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 = \$ 225.00

#### Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent RBC is a party.

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

12/20/04-12/21/04, adjournment by parties = \$ 750.00

1. The Panel has assessed \$375.00 of the adjournment fees to Claimant

2. The Panel has assessed \$375.00 of the adjournment fees joint and severally to Respondents.

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$ 450.00	= \$ 450.00
Pre-hearing conference: November 5, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$ 750.00	= \$ 750.00
Pre-hearing conference: September 1, 2004 1 session	

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Total Forum Fees	= \$ 1,200.00
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1. The Panel has assessed \$ 600.00 of the forum fees to Claimant.

2. The Panel has assessed \$ 600.00 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 225.00
Adjournment Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 1,200.00
<u>Less payments</u>	<u>= \$ 975.00</u>
Balance Due NASD Dispute Resolution	= \$ 225.00

2. Respondent RBC is assessed and shall pay the following fees:

<u>Member Fees</u>	<u>= \$ 3,550.00</u>
Total Fees	= \$ 3,550.00
<u>Less payments</u>	<u>= \$ 3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 00.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

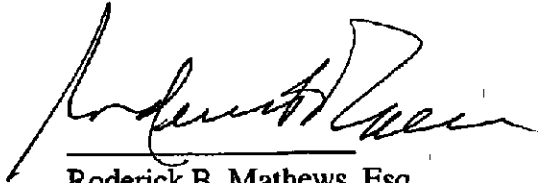
Adjournment Fee	= \$ 375.00
<u>Forum Fees</u>	<u>= \$ 600.00</u>
Total Fees	= \$ 975.00
<u>Less payments</u>	<u>= \$ 00.00</u>
Balance Due NASD Dispute Resolution	= \$ 975.00

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

ARBITRATION PANEL

Roderick B. Mathews, Esq.	-	Public Arbitrator, Presiding Chairperson
Overman Randolph Rollins, Esq.	-	Public Arbitrator, Panelist
William M. Meredith	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Roderick B. Mathews, Esq.  
Public Arbitrator, Presiding Chairperson

October 3, 2005

Signature Date

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Overman Randolph Rollins, Esq.  
Public Arbitrator, Panelist

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

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William M. Meredith  
Non-Public Arbitrator, Panelist

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

October 18, 2005  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Roderick B. Mathews, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

O. Randolph Rollins  
Overman Randolph Rollins, Esq.  
Public Arbitrator, Panelist

9/30/05  
Signature Date

William M. Meredith  
Non-Public Arbitrator, Panelist

Signature Date

October 18 2005  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Roderick B. Mathews, Esq.  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Overman Randolph Rollins, Esq.  
Public Arbitrator, Panelist

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

William M. Meredith  
William M. Meredith  
Non-Public Arbitrator, Panelist

Oct 6 2005  
Signature Date

October 18, 2005  
Date of Service (For NASD Dispute Resolution office use only)