

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Kaino Hamu, Claimant v. RBC Dain Rauscher, Inc. f/k/a Sutro & Co. Incorporated and Daniel Christopher Horgan, Respondents

Case Number: 04-01348

Hearing Site: Los Angeles, California

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

REPRESENTATION OF PARTIES

For Claimant:

Steven L. Miller, Esq.
Law Offices of Steven L. Miller
Encino, California

For Respondents:

Michael M. Gless, Esq.
Kessal, Young & Logan
Long Beach, California

CASE INFORMATION

Statement of Claim filed: February 25, 2004

Claimant's Uniform Submission Agreement signed: Not Dated

Joint Statement of Answer filed by Respondents: May 18, 2004

Respondent RBC Dain Rauscher, Inc. f/k/a Sutro & Co. Incorporated's Uniform Submission Agreement signed: March 8, 2004

Respondent Daniel Christopher Horgan's Uniform Submission Agreement signed: Not Dated

CASE SUMMARY

Claimant alleged negligence, fraud, deceit and omission of material fact, suitability, breach of fiduciary duty and breach of trust, churning, violation of the Securities Exchange Act of 1934 and California Corporations Code §25401, failure to supervise, violation of NASD rules and regulations, breach of contract, and breach of implied covenant of good faith and fair dealing. Claimant's allegations involved unspecified stocks, bonds, and variable annuities in his individual and IRA accounts.

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

RELIEF REQUESTED

In his Statement of Claim, Claimant requested compensatory damages of not less than \$1,405,209.00, disgorgement of fees and commissions in a sum of not less than \$423,819.00, punitive damages of an unspecified amount, reasonable return on sums invested consistent with the rate of return on securities deemed suitable, interest, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and costs.

OTHER ISSUES CONSIDERED AND DECIDED

On March 12, 2004, Claimant and Claimant's 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 May 14, 2004, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 13, 2005, NASD Dispute Resolution received notice of settlement.

On April 19, 2005, NASD Dispute Resolution received Respondents' Motion to Expunge the CRD Record of Respondent Daniel Christopher Horgan and Claimant's Notice of Non-Opposition.

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

- 1) Claimant's claims are dismissed in their entirety.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Daniel Christopher Horgan'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 Daniel Christopher Horgan 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) Any and all relief not specifically addressed herein, including punitive damages, is denied.

FEES

Pursuant to the *NASD Code of Arbitration Procedure* ("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	= \$ 500.00
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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. f/k/a Sutro & Co.

Incorporated is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Adjournment Fees

The following adjournment fees are assessed:

December 20 – 23, 2004 Hearing Dates, adjournment
requested by Respondents = \$ 1,200.00

The Panel waived the \$1,200.00 adjournment fee.

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:

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 2,400.00
Pre-hearing conferences: May 19, 2004 1 session
November 19, 2004 1 session

One (1) Hearing session @ \$1,200.00/session = \$ 1,200.00
Hearing: May 2, 2005 1 session

Total Forum Fees = \$ 3,600.00

1. The Panel assessed \$600.00 of the forum fees to Claimant Kaino Hamu.
2. The Panel assessed \$3,000.00 of the forum fees jointly and severally to RBC Dain Rauscher, Inc. f/k/a Sutro & Co. Incorporated and Daniel Christopher Horgan.

Fee Summary

1. Claimant Kaino Hamu is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 1,100.00
Less payments	= \$(1,800.00)
Refund Due NASD Dispute Resolution	= \$ (700.00)

2. Respondent RBC Dain Rauscher, Inc. f/k/a Sutro & Co. Incorporated is charged with the following fees and costs:

Member Fees	= \$ 8,500.00
Less payments	= \$(8,500.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents RBC Dain Rauscher, Inc. f/k/a Sutro & Co. Incorporated and Daniel Christopher Horgan are charged jointly and severally with the following fees and costs:
- | | |
|--|----------------------|
| Forum Fees | = \$ 3,000.00 |
| <u>Less Payments</u> | = \$(0.00) |
| Balance Due NASD Dispute Resolution | = \$ 3,000.00 |

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

George M. Wiener

- **Public Arbitrator, Presiding Chair**

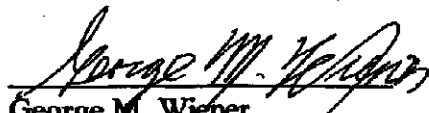
Susan G. Weinstein

- **Public Arbitrator**

John B. La Rue

- **Non-Public Arbitrator**

Concurring Arbitrators' Signatures


George M. Wiener
Chair, Public Arbitrator

5/2/05
Signature Date

Susan G. Weinstein
Public Arbitrator

Signature Date

John B. La Rue
Non-Public Arbitrator

Signature Date

5/2/05
Date of Service

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Susan G. Weinstein
John B. La Rue

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- Public Arbitrator
- Non-Public Arbitrator

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Non-Public Arbitrator

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Signature Date



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Public Arbitrator

5/2/05

Signature Date

John B. La Rue
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Signature Date

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