

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimants

Joe O. Hawkins and Margaret L. Hawkins

and

04-01418  
Phoenix, Arizona

Name of Respondents

Tucker Anthony Incorporated n/k/a RBC Dain Rauscher, Inc.  
Keith Daniel Schollard

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

**REPRESENTATION OF PARTIES**

Joe O. Hawkins and Margaret L. Hawkins ("**Claimants**") were represented by Robert Bertsch, Esq. and Richard Singer, Esq., Bertsch & Associates, P.C., Port Washington, New York.

Tucker Anthony Incorporated n/k/a RBC Dain Rauscher, Inc. ("**Respondent Tucker Anthony**") and Keith Daniel Schollard ("**Respondent Schollard**") hereinafter referred to as ("**Respondents**") were represented by Abe Lampart, Esq. and Anne Marie Murphy, Esq., Law Offices of Abe Lampart, San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 23, 2004. Submission Agreement of Claimants Joe O. Hawkins and Margaret L. Hawkins was signed on February 23, 2004.

Statement of Answer was filed by Respondents Tucker Anthony Incorporated n/k/a RBC Dain Rauscher, Inc. and Keith Daniel Schollard on or about June 18, 2004. Submission Agreement of Respondent Tucker Anthony Incorporated n/k/a RBC Dain Rauscher, Inc. was signed on June 14, 2004. Submission Agreement of Respondent Keith Daniel Schollard was signed on March 15, 2004.

**CASE SUMMARY**

Claimants alleged that the transactions made in their accounts were unsuitable. Claimants further alleged a breach of fiduciary duty, omission and misrepresentation of material fact, fraud, negligence, violation of Section 15 of the Securities Act, Section 20 of the Securities Exchange Act, NYSE rule 440, and SEC RULES (a)-3 AND (a)-4.

Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted a number of affirmative defenses, including ratification, waiver, estoppel, breach of duty of due diligence, failure to mitigate damages and statute of limitations.

### **RELIEF REQUESTED**

Claimants requested \$750,000 in compensatory damages, punitive damages, interest and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, an order of expungement of all references to this matter from the registered records of Keith Schollard maintained by the NASD Central Registration Depository ("CRD"), and costs, including attorney's fees.

### **STIPULATION**

Claimants Joe O. Hawkins and Margaret L. Hawkins, and Respondents RBC Dain Rauscher (f/k/a Tucker Anthony, Inc.) and Keith D. Schollard, through their respective attorneys of record, stipulated that:

1. Each and every one of Claimants' claims asserted against Respondents RBC Dain Rauscher and Tucker Anthony, Inc. is hereby dismissed with prejudice;
2. Each and every one of Claimants' claims asserted against Respondent Keith D. Schollard is hereby dismissed with prejudice;
3. The Panel will recommend the expungement of all references to the above-captioned arbitration from the registered records maintained by the NASD CRD of Respondent Schollard (CRD No. 1270949);
4. All arbitration and forum fees incurred will be divided equally between the Parties except for any post-Award fees attributable to the expungement request which shall be borne by Respondents. Each party shall be entitled to request a refund of their hearing session deposit pursuant to the Arbitration Rules;
5. The Stipulated Award in this matter may be executed in counterpart copies or a handwritten, signed Stipulated Award may be entered.

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

The parties advised NASD Dispute Resolution that they entered into an agreement to settle this matter on certain terms and conditions set forth in a confidential settlement agreement.

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

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

1. Each and every one of Claimants' claims asserted against Respondents RBC Dain Rauscher, Tucker Anthony and Keith D. Schollard is hereby dismissed with prejudice;
2. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Keith D. Schollard's (CRD No. 1270949) registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Keith D. Schollard must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. All arbitration and forum fees incurred will be divided equally between the Parties.
4. Any and all relief not specifically addressed herein is denied.

### **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

#### **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 Tucker Anthony Incorporated n/k/a 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 a single arbitrator	x	\$450.00	\$	450.00
June 23, 2005	1	session		
1 Pre-hearing session(s) with Panel	x	1,200.00	\$	1,200.00
September 3, 2004	1	session		
Total Forum Fees			\$	1,650.00

The Arbitration Panel has assessed \$825.00 of the forum fees to Joe O. Hawkins and Margaret L. Hawkins.

The Arbitration Panel has assessed \$825.00 of the forum fees jointly and severally to Tucker Anthony Incorporated n/k/a RBC Dain Rauscher, Inc. and Keith Daniel Schollard.

### Fee Summary

Claimants, Joe O. Hawkins and Margaret L. Hawkins are jointly and severally liable for:

Initial Filing Fee	= \$	375.00
<u>Forum Fees</u>	= \$	825.00
Total Fees	= \$	1,200.00
<u>Less payments</u>	= \$	-1,575.00
Balance to be refunded NASD Dispute Resolution	= \$	- 375.00

Respondent, Tucker Anthony Incorporated n/k/a RBC Dain Rauscher, Inc., 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

NASD Dispute Resolution  
Arbitration No. 04-01418  
Stipulated Award Page 3 of 5

Respondents, Tucker Anthony Incorporated n/k/a RBC Dain Rauscher, Inc. and Keith Daniel Schollard are jointly and severally liable for:

<u>Forum Fees</u>	= \$	825.00
<u>Total Fees</u>	= \$	825.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	825.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Merton E. Marks, Esq. - Public Arbitrator, Presiding Chair  
Louise R. Wakem - Public Arbitrator  
Marcia A. Herrmann - Non-Public Arbitrator

Concurring Arbitrators:



Merton E. Marks, Esq.  
Public Arbitrator, Presiding Chair



Louise R. Wakem  
Public Arbitrator



Marcia A. Herrmann  
Non-Public Arbitrator

10/28/05  
Date of Service (For NASD office use only)

Oct. 4, 2005  
Signature Date

  
Signature Date

  
Signature Date

FROM :

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Oct. 04 2005 10:36PM P1

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NASD Dispute Resolution  
Arbitration No. 04-01418  
Stipulated Award Page 3 of 5

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Louise R. Wakem - Public Arbitrator  
Marcia A. Herrmann - Non-Public Arbitrator

Concurring Arbitrators:

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Public Arbitrator, Presiding Chair

Louise R. Wakem  
Louise R. Wakem  
Public Arbitrator

Marcia A. Herrmann  
Marcia A. Herrmann  
Non-Public Arbitrator

Signature Date

10/3/05  
Signature Date

Signature Date

Date of Service (For NASD office use only)

NASD

NASD Dispute Resolution  
Arbitration No. 04-01418  
Stipulated Award Page 3 of 5

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Concurring Arbitrators:

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Merton E. Marks, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_  
Louise R. Wakem  
Public Arbitrator

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

\_\_\_\_\_  
*Marcia A. Herrmann*  
Marcia A. Herrmann  
Non-Public Arbitrator

\_\_\_\_\_  
10-27-05  
Signature Date

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Date of Service (For NASD office use only)

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Merton E. Marks, Esq. - Public Arbitrator, Presiding Chair  
Louise R. Wakem - Public Arbitrator  
Marcia A. Herrmann - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Merton E. Marks  
Merton E. Marks, Esq.  
Public Arbitrator, Presiding Chair

October 4, 2005  
Signature Date

/s/ Louise R. Wakem  
Louise R. Wakem  
Public Arbitrator

October 3, 2005  
Signature Date

/s/ Marcia A. Herrmann  
Marcia A. Herrmann  
Non-Public Arbitrator

October 27, 2005  
Signature Date

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Date of Service (For NASD office use only)