

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

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In the Matter of the Arbitration Between:  
RBC Dain Rasucher, Inc., Claimant v. Rick A Gonsalves, Respondent

Case Number: 04-01796

Situs: San Francisco, California

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Nature of the Dispute: Member v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant:

Kim M. Ruckdaschel-Haley, Esq.  
Lindquist & Vennum P.L.L.P.  
Minneapolis, Minnesota

For Respondent:

in persona propria  
Roseville, California

**CASE INFORMATION**

Statement of Claim filed: March 15, 2004

Claimant's Uniform Submission Agreement signed: March 10, 2004

Respondent's Uniform Submission Agreement signed: September 29, 2004

**CASE SUMMARY**

Claimant alleged that Respondent failed to pay a promissory note due and owing to Claimant.

Respondent did not file an answer.

**RELIEF REQUESTED**

Claimant requested \$85,386.36 in compensatory damages, interest at the rate of 4.56% per annum, and costs, including attorney's fees.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On June 8, 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom this Claim, relating exclusively to a promissory note, has been filed.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Panel determined that Respondent Rick A Gonsalves was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure.

### **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. Respondent is liable to and shall pay Claimant the sum of \$88,630.57, which includes compensatory damages and interest.
2. Respondent is liable to and shall pay Claimant the sum of \$10,400.00 in attorney's fees and costs, pursuant to the terms of the promissory note.
3. Respondent is liable to and shall pay Claimant the sum of \$1,000.00 as reimbursement for filing fees.
4. Respondent is liable to and shall pay NASD Dispute Resolution the entire \$1,950.00 in forum fees that accrued in this matter.
5. 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 | = \$ 1,000.00 |
|--------------------------|---------------|

#### **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 Rasucher, Inc. is a party and the following fees are assessed:

|                            |                      |
|----------------------------|----------------------|
| Member Surcharge           | = \$ 1,100.00        |
| Pre-Hearing Process Fee    | = \$ 750.00          |
| <u>Hearing Process Fee</u> | <u>= \$ 1,700.00</u> |
| <b>Total Member Fees</b>   | <b>= \$ 3,550.00</b> |

#### **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 Chairperson or the parties and the Panel. The following fees are assessed:

|  |             |
|--|-------------|
| (1) Pre-hearing conference session with the Chair @ \$450.00/session | = \$ 450.00 |
| Pre-hearing conference: November 15, 2004 1 session                  |             |

|  |             |
|--|-------------|
| (1) Pre-hearing conference session with the Panel @ \$750.00/session | = \$ 750.00 |
| Pre-hearing conference: September 3, 2004 1 session                  |             |

|  |             |
|--|-------------|
| (1) Hearing session @ \$750.00/session | = \$ 750.00 |
| Hearing: January 11, 2005 1 session    |             |

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|                         |                      |
|-------------------------|----------------------|
| <b>Total Forum Fees</b> | <b>= \$ 1,950.00</b> |
|-------------------------|----------------------|

1. The Panel assessed the entire \$1,950.00 in forum fees to Respondent.

**Fee Summary**

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

|                            |                       |
|----------------------------|-----------------------|
| Initial Filing Fee         | = \$ 1,000.00         |
| <u>Member Fees</u>         | <u>= \$ 3,550.00</u>  |
| Total Fees                 | = \$ 4,550.00         |
| <u>Less payments</u>       | <u>= \$(5,300.00)</u> |
| <b>Refund Due Claimant</b> | <b>= \$ (750.00)</b>  |

2. Respondent Rick A Gonsalves is charged with the following fees and costs:

|  |                      |
|--|----------------------|
| Forum Fees                                 | = \$ 1,950.00        |
| <u>Less payments</u>                       | <u>= \$ (0.00)</u>   |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 1,950.00</b> |

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**

|                    |   |  |
|--------------------|---|--|
| Rudy E. Thorwirth  | - | Non-Public Arbitrator, Presiding Chair |
| Frank Weaver, Esq. | - | Non-Public Arbitrator                  |
| Jerold R. Babin    | - | Non-Public Arbitrator                  |

**Concurring Arbitrators' Signatures**

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Rudy E. Thorwirth  
Chair, Non-Public Arbitrator

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Signature Date

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Frank Weaver, Esq.  
Non-Public Arbitrator

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Signature Date

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Jerold R. Babin  
Non-Public Arbitrator

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Signature Date

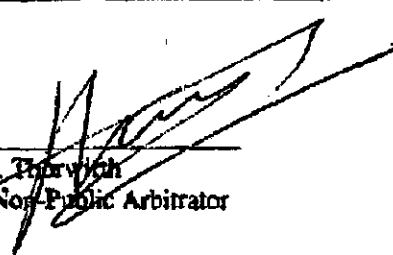
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Date of Service

**ARBITRATION PANEL**

|                    |  |
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| Frank Weaver, Esq. | - Non-Public Arbitrator                  |
| Jerold R. Babin    | - Non-Public Arbitrator                  |

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
Rudy E. Thorwirth  
Chair, Non-Public Arbitrator

January 12, 2005  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Frank Weaver, Esq.  
Non-Public Arbitrator

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

\_\_\_\_\_  
Jerold R. Babin  
Non-Public Arbitrator

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

01/13/05  
\_\_\_\_\_  
Date of Service

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Rudy E. Thorwirth  
Chair, Non-Public Arbitrator

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

  
\_\_\_\_\_  
Frank Weaver, Esq.  
Non-Public Arbitrator

1/12/05  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Jerold R. Babin  
Non-Public Arbitrator

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

01/13/05  
\_\_\_\_\_  
Date of Service

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Chair, Non-Public Arbitrator

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Signature Date

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Frank Weaver, Esq.  
Non-Public Arbitrator

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

  
Jerold R. Babin  
Non-Public Arbitrator

1-14-05  
Signature Date

1/14/05  
Date of Service