

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

RBC Dain Rauscher, Inc.

and

Case Number: 04-02761  
Hearing Site: Chicago, Illinois

Respondent

Joseph Johnson

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**NATURE OF DISPUTE**

Member v. Association Person

**REPRESENTATION OF PARTIES**

RBC Dain Rauscher, Inc., ("Claimant"), or ("RBC Dain") was represented by Nicole Siemens, Esq., and Jonathan M. Harris, Esq., of Lindquist & Vennum L.L.P., located in Minneapolis, Minnesota.

Joseph Johnson, ("Respondent"), or ("Johnson") was represented by Samuel Young, Esq., located in Lincolnwood, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about April 16, 2004. The Submission Agreement was signed by Claimant on March 18, 2004.

The Statement of Answer was filed by Joseph Johnson or about November 8, 2004. Johnson did not sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: Joseph Johnson entered into an employment agreement with RBC Dain. Under the agreement, RBC Dain agreed to loan Johnson \$ 263,986.00 in consideration for, among other things, Johnson's execution of a Promissory Note in favor of RBC Dain. At the time of the termination of his employment, pursuant to the Agreement, Johnson was to pay \$158,391.00 in principal on the Note. The amount was immediately due and payable upon Johnson's termination, if made with cause. To date, Johnson has not made a payment, and is therefore in default.

Claimants' complaint is in connection with Johnson's employment at RBC Dain Rauscher.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim. Respondent filed a Counterclaim for the following: wrongful discharge, liable and slander.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$158,391.00 plus interest in compensatory damages.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees.

Respondent filed a Counterclaim in the amount of \$275,000.00 in compensatory damages.

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

Respondent Johnson did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant RBC Dain Rauscher, Inc.'s claims against Respondent Joseph Johnson are dismissed in their entirety with prejudice;
- 2.) The Counterclaim of Respondent Joseph Johnson is dismissed with prejudice;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and

- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **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	= \$1,000.00
Counterclaim Claim filing fee	= \$ 300.00

#### **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 is RBC Dain Rauscher, Inc.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

#### **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:

Two (2) Pre-hearing session(s) with Panel x \$1,125.00	= \$ 2,250.00
Pre-hearing conference(s): September 23, 2004 1 session	
February 28, 2005 1 session	

(10) Hearing sessions x \$1,125.00	= \$11,250.00
Hearing Date(s):	
March 7, 2005	2 sessions
March 8, 2005	2 sessions
April 19, 2005	2 sessions
April 20, 2005	2 sessions
April 21, 2005	2 sessions

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Total Forum Fees	= \$13,500.00
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The Arbitration Panel has assessed \$ 6,750.00 of the forum fees to RBC Dain Rauscher, Inc.

The Arbitration Panel has assessed \$ 6,750.00 of the forum fees to Respondent Joseph Johnson.

**Fee Summary**

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

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 6,750.00
<u>Total Fees</u>	<u>= \$12,950.00</u>
<u>Less payments</u>	<u>= \$ 7,325.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,625.00

Respondent Joseph Johnson is liable for:

Counterclaim Filing Fees	= \$ 300.00
Forum Fees	= \$ 6,750.00
<u>Total Fees</u>	<u>= \$ 7,050.00</u>
<u>Less payments</u>	<u>= \$1,425.00</u>
Balance Due to NASD Dispute Resolution	= \$ 5,625.00

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

**ARBITRATION PANEL**

Stuart D. Perlman, Esq. – Public Arbitrator, Presiding Chair

Philip P. Rummel Rummel, Esq. - Public Arbitrator

Brian E. Slotky - Non-Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Stuart D. Perlman, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Philip P. Rummel, Esq.  
Public Arbitrator

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Signature Date

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Brian E. Slotky  
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Public Arbitrator, Presiding Chair

May 20, 2005  
Signature Date

\_\_\_\_\_  
Philip P. Rummel, Esq.  
Public Arbitrator

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Signature Date

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Signature Date

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Public Arbitrator

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Brian E. Slotky  
Non-Public Arbitrator

5/19/05  
\_\_\_\_\_  
Signature Date