

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Harvey Kazatsky and Marsha Kazatsky vs. Tucker Anthony n/k/a RBC Dain Rauscher, Inc.  
and Robert Haber

Case Number: 04-03507

Hearing Site: Philadelphia, Pennsylvania

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

**REPRESENTATION OF PARTIES**

Claimants Harvey Kazatsky and Marsha Kazatsky, hereinafter collectively referred to as "Claimants": Darren C. Blum, Esq., Blum, Silver & Schwartz, LLP, Plantation, Florida.

Respondents Tucker Anthony n/k/a RBC Dain Rauscher, Inc. ("RBC"), and Robert Haber ("Haber"), hereinafter collectively referred to as "Respondents": Hugo A. Hilgendorff, IV, Esq., Bressler, Amery & Ross, P.C., Fort Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: May 10, 2004.

Claimants signed the Uniform Submission Agreement: May 4, 2004.

Statement of Answer filed by Respondents on or about: August 4, 2004.

RBC signed the Uniform Submission agreement on or about: September 15, 2004.

Haber signed the Uniform Submission Agreement on or about: August 2, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability, breach of contract, breach of fiduciary duty, common law fraud, negligence, and failure to supervise. The causes of action relate to retirement accounts.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief can be granted; doctrines of laches, waiver, ratification and estoppel; failure to mitigate damages; no breach of duty; injuries or damages attributable to acts or omissions of third parties; contributory/comparative negligence; and statute of limitations.

**RELIEF REQUESTED**

Claimants in their Statement of Claim requested compensatory damages of approximately

\$119,000.00, interest at the legal rate from the date of purchase or reasonable market return, rescission, punitive damages, costs, and such other relief as is just and proper.

Respondents in their Statement of Answer requested dismissal of the Statement of Claim and such other and further relief as is just and proper.

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

On or about June 15, 2006, the parties informed NASD Dispute Resolution that the case was settled and on July 11, 2006, submitted this Stipulated Award.

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**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Robert Haber's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Robert Haber's must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to NASD Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous;

2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 300.00
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### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. In this matter, RBC Dain Rauscher, Inc. is a party.

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00

### **Adjournment Fees**

The following adjournment fees are assessed:

September 13-16, 2005, adjournment requested by Claimants and Respondents = \$ 1,125.00

1. The Panel has assessed \$562.50 of the adjournment fees to Claimants.
2. The Panel has assessed \$562.50 of the adjournment fees to jointly and severally to Respondents.

### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

September 13-16, 2005, adjournment requested by Claimants and Respondents	= \$ 200.00
Claimants' share	= \$ 100.00
Respondents' share	= \$ 100.00

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing conference session with single arbitrator @ \$450.00/session	
	= \$ 450.00
Pre-hearing conference: July 8, 2005	1 session

One (1) Pre-hearing conference session with Panel @\$1,125.00/session = \$1,125.00  
Pre-hearing conference: November 19, 2004 1 session

One (1) Expungement Hearing session with Panel @ \$1,125.00/session = \$1,125.00  
Hearing: October 20, 2006 1 session

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Total Forum Fees = \$2,700.00

1. The Panel has assessed \$1,350.00 of the forum fees to Claimants.
2. The Panel has assessed \$1,350.00 of the forum fees jointly and severally to Respondents.

### **FEE SUMMARY**

1. Claimants are solely liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
Three-Day Cancellation Fee	= \$ 100.00
Forum Fees	= \$ 1,350.00
Total Fees	= \$ 2,312.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 887.50

2. Respondent RBC is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

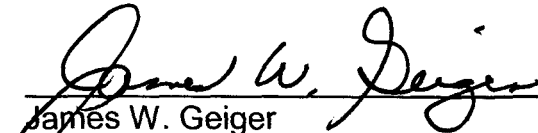
Adjournment Fee	= \$ 562.50
Three-Day Cancellation Fee	= \$ 100.00
Forum Fees	= \$ 1,350.00
Total Fees	= \$ 2,012.50
Less payments	= \$ 1,912.50
Balance Due NASD Dispute Resolution	= \$ 100.00

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

**ARBITRATION PANEL**

James W. Geiger	-	Public Arbitrator, Presiding Chairperson
Paul J. Leis	-	Public Arbitrator
Michael D. Neft	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
\_\_\_\_\_  
James W. Geiger  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Paul J. Leis  
Public Arbitrator

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

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Michael D. Neft  
Non-Public Arbitrator

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

December 20, 2006

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Date of Service (For NASD Dispute Resolution use only)

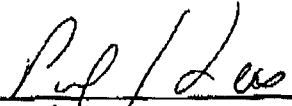
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Public Arbitrator, Presiding Chairperson

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Signature Date

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Paul J. Leis  
Public Arbitrator

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Signature Date



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Michael D. Neft  
Non-Public Arbitrator



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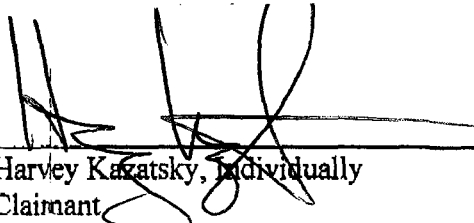
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December 20, 2006

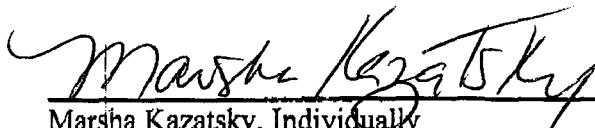
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Date of Service (For NASD Dispute Resolution use only)


**Parties' Signatures**

  
Harvey Kazatsky, Individually  
Claimant

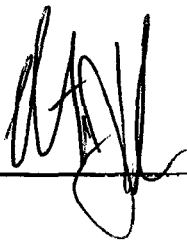
5-5-06  
Signature Date

  
Marsha Kazatsky, Individually  
Claimant

5-5-06  
Signature Date

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

7-6-06  
Signature Date

  
Robert Haber  
Respondent

6/26/06  
Signature Date