

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

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In the Matter of the Arbitration Between:

James R. Lincoln, Jr.

Claimant,

Case Number: 04-03600

vs.

RBC Dain Rauscher, Inc.,  
Barbara June Forrest, and  
Thomas Eugene Riley,

Respondents.

Hearing Site: Dallas, Texas

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**NATURE OF THE DISPUTE**

Customer vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

Claimant, James R. Lincoln, Jr., hereinafter referred to as "Claimant": Robert Bertsch, Esq. of Bertsch & Associates, P.C., located in Port Washington, New York.

Respondents, RBC Dain Rauscher, Inc. ("RBC Dain"), Barbara June Forrest ("Forrest") and Thomas Eugene Riley ("Riley"), hereinafter collectively referred to as "Respondents": Brett Kutnick, Esq. of Carrington, Coleman, Sloman & Blumenthal, L.L.P., located in Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: May 17, 2004

Claimant signed the Uniform Submission Agreement: May 8, 2004

Statement of Answer filed by Respondents on or about: July 22, 2004

Respondent RBC Dain signed the Uniform Submission Agreement: June 9, 2004

Respondent Forrest signed the Uniform Submission Agreement: May 25, 2004

Respondent Riley signed the Uniform Submission Agreement: May 26, 2004

### CASE SUMMARY

Claimant asserted the following causes of action: purchase of unsuitable securities, breach of fiduciary duty, violations of Section 10(b) and Rule 10b-5, and violations of Section 15 of the Securities Act and Section 20 of the Securities Exchange Act. The causes of action related to the alleged actions of Respondents in recommending and executing trades in unsuitable mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant failed to state a claim upon which relief could be granted;
2. The claims are barred in whole or in part by the applicable statute of limitations or laches;
3. The claims are barred by the doctrines of waiver, ratification, and estoppel;
4. Claimant failed to mitigate his damages;
5. Claimant's damages, if any, must be reduced or are barred because of his own conduct;
6. The securities recommended were suitable and Forrest satisfied the "Know Your Customer" Rule;
7. Riley was not involved in any of the conduct alleged in the Statement of Claim;
8. Respondents did not breach any fiduciary duty;
9. RBC Dain appropriately supervised the accounts; and
10. Respondents did not violate the federal securities laws.

### RELIEF REQUESTED

Claimant initially requested:

Compensatory Damages	\$ 300,000
Interest	to be determined at hearing
Attorneys' Fees	in a reasonable amount
Other Costs	in a reasonable amount
Other Monetary/Non-Monetary Relief if any:	in a reasonable amount

Respondents initially requested:

1. All claims against Riley be dismissed because he was not involved in the conduct alleged in the Statement of Claim;
2. All claims against Respondents be dismissed at a hearing of this matter;
3. An award entered against Claimant for all costs incurred and such other and further relief to which Respondents are justly entitled.

In light of the settlement of the claims, Claimant and Respondents request that all claims in this case be dismissed with prejudice and further request the expungement of Claimant's complaint from the CRD records of Riley and Forrest.

### OTHER ISSUES CONSIDERED AND DECIDED

Claimant withdrew his claims against Riley on March 4, 2005.

Prior to the hearing, the case was settled, and Claimant and Respondents have agreed that all disputes between them are fully resolved.

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 remains on file with the NASD Dispute Resolution (the "NASD").

The parties jointly requested that the Panel expunge any record of this proceeding from Forrest's and Riley's records with the Central Registration Depository ("CRD").

Having considered the request for expungement and Respondents' Answer to the Statement of Claim and the documentary evidence attached thereto, the Panel makes the following affirmative findings of fact pursuant to Rule 2130:

This Panel recognizes that expungement of a CRD record under any circumstances is an extraordinary remedy and should only be used when the expunged information has no meaningful regulatory or investor protection value. The Panel believes the criteria enumerated in NASD Rule 2130 for expungement is met in this situation.

The expungement for Riley is based on the affirmative determinations that the claims and allegations against Riley are factually impossible and clearly erroneous, and that Riley was not involved in any alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The expungement for Forrest is based on the affirmative determinations that the claims and allegations against Forrest are clearly erroneous, and that Forrest was not involved in any alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

### AWARD

Pursuant to the parties' agreement, and after considering the parties' submissions and representations, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. All claims in this case are dismissed with prejudice pursuant to the parties' settlement agreement.
2. Consistent with the findings of fact above, the Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Barbara June Forrest's and Respondent Thomas Eugene Riley's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-

09, Respondents Forrest and Riley 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.*

3. That other than NASD Fees which are specified below, the parties shall each bear their own costs and expenses, including attorneys' fees, incurred in this matter.
4. That any and all relief not specifically addressed herein, including punitive damages and attorneys' fees, is denied with prejudice.

### **FEES**

Pursuant to the Code and the agreement of the parties, 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. Accordingly, RBC Dain Rauscher, Inc. is a party and the associated persons' firm and the following member fees are assessed:

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed: None.

#### **Forum Fees and Assessments**

The Arbitration Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
<u>Pre-hearing conference:      October 12, 2004      1 session</u>	
Total Forum Fees	= \$ 1,125.00

The Arbitration Panel has assessed \$562.50 of the forum fees to James R. Lincoln, Jr. and has assessed \$562.50 of the forum fees to RBC Dain Rauscher, Inc.

### **Fee Summary**

Claimant James R. Lincoln, Jr. is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$ 1,425.00
Balance Refunded by NASD Dispute Resolution	= \$ 562.50

Respondent RBC Dain Rauscher, Inc. is solely liable for:


Member Fees	= \$ 5,200.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 5,762.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

**ARBITRATION PANEL**

Michael E. Rhodes - Public Arbitrator, Presiding Chairperson  
David W. Wiley - Public Arbitrator  
Robert E. Behrendt - Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Michael E. Rhodes - ~~Rhode~~  
Public Arbitrator, Presiding Chairperson

6/21/05  
Signature Date

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David W. Wiley  
Public Arbitrator

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

\_\_\_\_\_  
Robert E. Behrendt  
Non-Public Arbitrator

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

7/8/05 Mhu  
Date of Service (For NASD Dispute Resolution use only)

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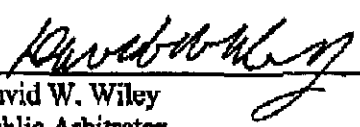
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Public Arbitrator, Presiding Chairperson

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Signature Date

  
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David W. Wiley  
Public Arbitrator

6-30-05  
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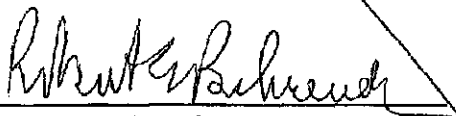
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