

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Carole A. Dagg

and

Case Number: 04-04352
Hearing Site: Troy, Michigan

Respondents

RBC Dain Rauscher Inc.,
Gregory J. Schwartz & Company, Inc.,
and Timothy Allen Newman

NATURE OF DISPUTE

Customer v. Members and Associated Person

REPRESENTATION OF PARTIES

Carole A. Dagg ("Claimant") was represented by David A. Monroe, Esq., Law Offices of David A. Monroe, PLLC, Howell, Michigan.

RBC Dain Rauscher Inc. ("RBC Dain") was represented by Timothy P. Chastain, Esq., Carrington Coleman Sloman & Blumenthal L.L.P., Dallas, Texas.

Gregory J. Schwartz & Company, Inc. ("GJSC") and Timothy Allen Newman ("Newman"), hereinafter collectively referred to as the "Schwartz Respondents," were represented by David S. Snyder, Esq., Sullivan Ward Asher & Patton PC, Southfield, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about June 21, 2004. The Submission Agreement of Carole A. Dagg was signed on or about June 16, 2004.

The Statement of Answer was filed by RBC Dain on or about August 12, 2004. The Submission Agreement of RBC Dain was signed on or about July 14, 2004 by Michael A. Pysno.

The Statement of Answer was filed jointly by GJSC and Newman on or about August 11, 2004. The Submission Agreement of Gregory J. Schwartz & Company, Inc. was signed on or about October 1, 2004. The Submission Agreement of Timothy Allen Newman was signed on or about October 1, 2004.

RBC Dain filed a Motion to Dismiss on or about May 13, 2005.

The Schwartz Respondents filed a Motion to Dismiss on or about June 9, 2005. Claimant filed a Response to the Motion on or about June 27, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: churning; breach of contract; negligence/misrepresentation; violation of the Michigan Consumer Protection Act; breach of fiduciary duty; federal and state securities law violations; fraud and common law fraud. The causes of action related to Claimant's allegations that Respondents invested a large portion of Claimant's account in SBC Communications, which declined in value and that, although Respondent Newman was Claimant's accountant in addition to her broker, Newman failed to properly advise Claimant with regard to the tax penalties that Claimant incurred as a result of a disbursement from her account. Claimant also asserted that the Schwartz Respondents invested Claimant's accounts in high risk and/or low performing investments without informing Claimant of the risks. These investments included MFS Strategic Value Fund-C; MFS Strategic Growth Fund-C, ASAF Janus Capital Growth-B, and MFS Utility Fund-C.

Unless specifically admitted in its Answer, RBC Dain denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: failure to state a claim upon which relief can be granted; Claimant's claims are barred, in whole or in part, by the applicable statutes of limitations and/or laches; and Claimant failed to take reasonable steps to mitigate her damages, if any.

Unless specifically admitted in their Answer, GJSC and Newman denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant has failed to state a cause of action upon which relief may be granted; Claimant has failed to accurately demon state any actual damages and it appears that she may have no actual damages at all; and the alleged damages claimed by Claimant are not the result of any act or omission on the part or Respondents.

RELIEF REQUESTED

Claimant requested an award in the amount of \$300,000.00, plus punitive/exemplary damages of approximately \$110,000.00, interest, costs, attorneys' fees, rescission, and additional damages as allowed by the panel.

RBC Dain requested that the claimant receive no recovery against it and that any other forum fees or other fees be assessed against parties other than RBC Dain.

Respondents requested that the claims asserted against them be dismissed in their entirety and that costs be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Claimant voluntarily dismissed RBC Dain Rauscher with prejudice on or about May 18, 2005.

After consideration of the pleadings and oral arguments, in its Order entered on July 18, 2005, the panel granted the Schwartz Respondents Motion to Dismiss Counts II (Churning) and V (Consumer Protection Act Violations). The panel denied the remainder of the Motion.

After the close of Claimant's case in chief, Respondents orally moved for a directed verdict. The panel denied the motion on the record.

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.) Respondents, Gregory J. Schwartz & Company, Inc., and Timothy Allen Newman, are jointly and severally liable for and shall pay to Claimant, Carole A. Dagg, the sum of \$36,000.00 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) Any relief not specifically enumerated, including punitive/exemplary damages and attorneys' 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 = \$ 300.00

Member Fees

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

Three (3) Pre-hearing sessions with Panel x \$1,125.00	= \$ 3,375.00
Pre-hearing conferences: October 14, 2004 1 session	
July 8, 2005 1 session	
July 18, 2005 1 session	
Six (6) Hearing sessions x \$1,125.00	= \$ 6,750.00
Hearing Dates: July 25, 2005 2 sessions	
July 26, 2005 2 sessions	
July 27, 2005 2 sessions	
Total Forum Fees	= \$10,125.00

The Arbitration Panel has assessed \$5,062.50 of the forum fees to Carole A. Dagg.

The Arbitration Panel has assessed \$5,062.50 of the forum fees jointly and severally to Gregory J. Schwartz & Company, Inc., and Timothy Allen Newman.

Fee Summary

Claimant, Carole A. Dagg, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,062.50
Total Fees	= \$ 5,362.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,937.50

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

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

Respondent, Gregory J. Schwartz & Company, Inc., is liable for:

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

Respondents, Gregory J. Schwartz & Company, Inc., and Timothy Allen Newman, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 5,062.50
<u>Total Fees</u>	= \$ 5,062.50
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 5,062.50

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

ARBITRATION PANEL

Thomas C. Wagner, Esq. - Public Arbitrator, Presiding Chair
Walter H. Clements, Esq. - Public Arbitrator
George E. White - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Thomas C. Wagner, Esq.
Thomas C. Wagner, Esq.
Public Arbitrator, Presiding Chair

07/28/05
Signature Date

/s/ Walter H. Clements, Esq.
Walter H. Clements, Esq.
Public Arbitrator

07/28/05
Signature Date

/s/ George E. White
George E. White
Non-Public Arbitrator

07/28/05
Signature Date

07/28/05
Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 04-04382
Award Page 5 of 5

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

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

Respondent, Gregory J. Schwartz & Company, Inc., is liable for:

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

Respondents, Gregory J. Schwartz & Company, Inc., and Timothy Allen Newman, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 5,062.50
<u>Total Fees</u>	= \$ 5,062.50
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 5,062.50

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Signature Date

Walter H. Clements, Esq.
Public Arbitrator

Signature Date



George E. White
Non-Public Arbitrator

07/28/05

Signature Date

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NASD Dispute Resolution
Arbitration No. 04-04352
Award Page 5 of 5

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

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

Respondent, Gregory J. Schwartz & Company, Inc., is liable for:

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

Respondents, Gregory J. Schwartz & Company, Inc., and Timothy Allen Newman, are jointly and severally liable for:

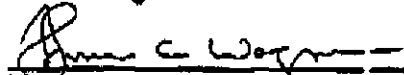
Forum Fees	= \$ 5,062.50
Total Fees	= \$ 5,062.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,062.50

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7/28/05

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Public Arbitrator

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NASD Dispute Resolution
Arbitration No. 04-04352
Award Page 6 of 8

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

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

Respondent, Gregory J. Schwartz & Company, Inc., is liable for:

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

Respondents, Gregory J. Schwartz & Company, Inc., and Timothy Allen Newman, are jointly and severally liable for:

Forum Fees	= \$ 5,062.50
Total Fees	= \$ 5,062.50
Less payments	= \$ 0.00
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