

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

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In the Matter of the Arbitration Between

Claimant

Barbara N. Simmons

v.

04-05104

Minneapolis, Minnesota

Respondent

RBC Dain Rauscher, Inc.

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Nature of Dispute: Associated Person v. Member

**REPRESENTATION OF PARTIES**

Barbara N. Simmons ("Claimant") was represented by F. Chet Taylor, Esq., of Meikle & Taylor, P.A., Minneapolis, Minnesota.

RBC Dain Rauscher, Inc. ("Respondent") was represented by Melissa Raphan, Esq., and Eric Sjoding, Esq., of Dorsey & Whitney, LLP, Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 13, 2004. The Submission Agreement of Claimants was signed on or about July 13, 2004.

The Statement of Answer was filed by Respondent, RBC Dain Rauscher, Inc., on or about October 15, 2004. The Submission Agreement of Respondent, RBC Dain Rauscher, Inc., was signed on or about October 21, 2004.

Respondent, RBC Dain Rauscher, Inc., filed a Motion to Dismiss the Statutory Discrimination Claims on or about August 6, 2004. Claimant filed a Voluntary Dismissal without prejudice of her Statutory Discrimination Claims on or about August 10, 2004.

Respondent, RBC Dain Rauscher, Inc., filed an Amended Answer on or about November 22, 2004.

**CASE SUMMARY**

Claimant asserted causes of action including the following: wrongful termination, age and gender discrimination, defamation, wrongful withholdings and violation of NASD Rule 2110. The causes of action related to Claimant's allegation that Respondent terminated her employment without justification and thereafter placed a defamatory explanation for her termination on her Form U-5.

Claimant also alleged that Respondent illegally withheld compensation due to her after she was terminated.

Respondent denied the allegations set forth in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; some or all of the claims are barred by the applicable statute of limitations; Claimant's claims are barred, in whole or in part, by her own misconduct or voluntary actions; Claimant failed to mitigate her alleged damages, if any, and failed to exercise reasonable diligence in an effort to mitigate her damages; and Claimant's claims are barred, in whole or in part, by the doctrines of waiver, estoppel and unclean hands.

### **RELIEF REQUESTED**

Claimant requested an award of \$1,000,000 in compensatory damages, plus punitive damages, attorneys' fee, costs, and any other relief the panel deemed just and equitable. In addition, Claimant requested an order from the panel directing Respondent to amend her Form U-5 to correct the defamatory statements.

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

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

Arbitrator, Jenny F. Lind, failed to appear at the arbitration hearing, but all parties agreed to go forward with a two-member arbitration panel.

Also at the arbitration hearing Respondent made a Motion to Exclude Claimant's Expert Witness and Claimant objected. After deliberation, the panel denied Respondent's Motion.

After reviewing the pleadings, the testimony, and the evidence presented at the hearing, the arbitration panel has made the following Findings of Fact:

- The reason for discharge as listed in Claimant, Barbara N. Simmons' Form U-5, was false and should be expunged to correct the erroneous statement.

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 originals 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. Respondent, RBC Dain Rauscher, Inc., is liable for and shall pay to Claimant, Barbara N. Simmons, the sum of One Hundred Twenty Five Thousand Dollars and No Cents (\$125,000.00) in compensatory damages.
2. The Panel orders the expungement of the explanatory text referenced after the reason for termination ("Failure to follow firm & NASD Procedures regarding the sale of unregistered securities") from Barbara N. Simmons Form U-5 filed with CRD. The explanatory text for the reason for termination on Barbara N. Simmons' Form U-5 in question should reflect "disagreement over internal policies";
3. The Panel orders the expungement of the "yes" answer to Question 7(F1) from the Amended Form U-5, filed by RBC Dain Rauscher on June 23, 2004 with CRD, on the record of Claimant, Barbara N. Simmons. The answer to Question 7(F1) should be "no";
4. The Panel orders the expungement of the "yes" answer to Question 14(J) from the Reliscence U4, filed by Feltl & Company, on June 16, 2004 with CRD, on the record of Claimant, Barbara N. Simmons. The answer to Question 14(J) should be "no". The panel further orders the expungement of the Termination DRP submitted on the same filing;
5. The expungement directives are made with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Claimant, Barbara N. Simmons, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
6. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto, are denied with prejudice; and
7. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees.

### **FEES**

Pursuant to the Code, the following fees are assessed:

### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 500

### **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 person at the time of the events giving rise to the dispute. In this matter, the member firm is RBC Dain Rauscher, Inc.

Member surcharge = \$ 2,250  
Pre-hearing process fee = \$ 750  
Hearing process fee = \$ 4,000

### **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 arbitrators, 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 the Chairperson x \$ 450 = \$ 450

Pre-hearing conference: 02/24/2005 1 session

One (1) Pre-hearing session with Panel x \$ 1,200 = \$ 1,200

Pre-hearing conference: 12/16/2004 1 session

Six (6) Hearing sessions with Panel x \$ 1,200 = \$ 7,200

Hearing Dates: 05/03/2005 2 sessions  
05/04/2005 2 sessions  
05/05/2005 2 sessions

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Total Forum Fees = \$ 8,850

The Arbitration Panel has assessed \$ 8,850 of the forum fees to RBC Dain Rauscher, Inc.

**FEE SUMMARY**

Claimant, Barbara N. Simmons, is liable for:

Initial Filing Fee	= \$ 375
Total Fees	= \$ 375
Less payments	= \$ 1,700
Balance Refunded By NASD Dispute Resolution	= \$ 1,325

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

Member Fees	= \$ 7,000
Forum Fees	= \$ 8,850
Total Fees	= \$ 15,850
Less payments	= \$ 10,750
Balance Due NASD Dispute Resolution	= \$ 5,100

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

**ARBITRATION PANEL**

Kathy A. Tatone, J.D. - Public Arbitrator, Presiding Chair  
Joan L. Volz - Public Arbitrator

Concurring Arbitrators:

\_\_\_\_\_  
Kathy A. Tatone, J.D.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Joan L. Volz  
Public Arbitrator

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

5/26/05  
Date of Service (NASD use only)

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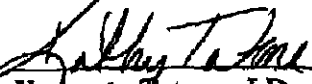
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Concurring Arbitrators:

  
Kathy A. Tatone, J.D.  
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5/26/05  
Signature Date

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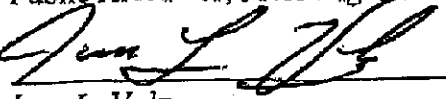
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Joan L. Volz - Public Arbitrator

Concurring Arbitrators:

Kathy A. Tatone, J.D.  
Public Arbitrator, Presiding Chair

  
Joan L. Volz  
Public Arbitrator

Signature Date

25 May 05

Signature Date

5/20/05  
Date of Service (NASD use only)