

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

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In the Matter of the Arbitration Between:

Name of Claimant

RBC Dain Rauscher, Inc.

vs.

Case Number: 05-02286  
Hearing Site: Des Moines, Iowa

Names of Respondents

Citigroup Global Markets, Inc.,  
Gary L. Aronson, and  
John R. Stengel

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**NATURE OF THE DISPUTE**

Member vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

RBC Dain Rauscher, Inc. ("Claimant") was represented by W. Ross Forbes, Jr., Esq. and Retta A. Miller, Esq., Jackson Walker L.L.P., Dallas, Texas.

Citigroup Global Markets, Inc. ("Citigroup"), Gary L. Aronson ("Aronson") and John R. Stengel ("Stengel"), hereinafter collectively referred to as "Respondents," were represented by Jerry M. Santangelo, Esq. and Sarah R. Farrell, Esq., Neal, Gerber & Eisenberg LLP, Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 2, 2005. The Submission Agreement of Claimant was signed on or about May 16, 2005.

The Statement of Answer was filed by Respondent, Citigroup, on or about August 15, 2005. The Statement of Answer was filed jointly by Respondents Aronson and Stengel on or about August 15, 2005.

The Post-Hearing Submission was filed by Claimant on or about November 14, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: conversion; misappropriation of

confidential information; tortious interference with contract; tortious interference with Claimant's contracts with its customers; tortious interference with prospective advantage or business relationship; breach of fiduciary duty by Aronson and Stengel; inducement by Citigroup and Stengel of Aronson's breaches of fiduciary duty; civil conspiracy; unfair competition; unjust enrichment; breach of non-competition agreement by Aronson; and fraud and business disparagement by Citigroup. The causes of action related to the Respondents attempt to purloin and hire Claimant's employees unlawfully, and to wrongfully appropriate Claimant's trade secrets and confidential information.

Unless specifically admitted in its Answer, Respondent Citigroup denied the allegations made in the Statement of Claim and asserted an affirmative defense that Citigroup did not have any role in the alleged wrongdoing.

Unless specifically admitted in their Answer, Respondents Aronson and Stengel denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief may be granted; Claimant's damages, if any, were not proximately caused by any act, representation, or omission of Respondents, but rather due to Claimant's own conduct; Claimant failed to mitigate its damages; Claimant's action is barred by estoppel and/or laches; Respondents' actions are protected by the privilege of fair competition; Claimant is barred from bringing this action due to the doctrine of unclean hands; and Claimant is not entitled to recover punitive damages or attorneys' fees.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	Unspecified
Exemplary/Punitive Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

At hearing, Claimant requested the following damages from Respondents: \$402,693.00 from Aronson and Citigroup, jointly and severally; \$188,107 from Stengel and Citigroup, jointly and severally; attorneys' fees of \$90,000.00; and expert witness fees of \$15,800.00.

Respondent Citigroup requested that the claims asserted against it be denied in their entirety.

Respondents, Aronson and Stengel, requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

Respondents Citigroup Global Markets, Inc., Gary L. Aronson and John R. Stengel did not file with the NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

The Panel specifically finds that:

1. The evidence does not prove that Citigroup "raided" or committed other "wrongful acts" against Claimant;
2. Mr. Aronson's 1982 "non-compete" agreement was no longer enforceable in 2005. There is no evidence that Mr. Aronson knowingly ratified any asserted "assignment" of this agreement with successor companies; and,
3. Mr. Aronson and Mr. Stengel did improperly remove some Claimant produced records from their offices with Claimant. However, there are no damages directly and solely attributable to these acts. Consequently, no direct damages are awarded. Mr. Aronson's and Mr. Stengel's rolodexes and day-planners are not Claimant produced records.

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.

### **AWARD**

After considering the pleadings, the testimony, the evidence presented at the hearing and the post-hearing submission, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and,
- 3.) Any relief not specifically enumerated, including punitive 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 the non-refundable filing fee for each claim:

Initial Claim filing fee = \$ 500.00

### **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 Citigroup Global Markets, Inc.

Member surcharge = \$ 1,500.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 2,200.00

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. A 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 a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: July 31, 2006 1 session	
One (1) Pre-hearing session with Panel x \$1,000.00	= \$ 1,000.00
Pre-hearing conference: November 1, 2005 1 session	
Four (4) Hearing sessions x \$1,000.00	= \$ 4,000.00
Hearing Dates: November 8, 2006 2 sessions	
November 9, 2006 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 5,450.00

The Panel has assessed \$1,362.50 of the forum fees to RBC Dain Rauscher, Inc.

The Panel has assessed \$1,362.50 of the forum fees to Citigroup Global Markets, Inc.

The Panel has assessed \$2,725.00 of the forum fees jointly and severally to Gary L. Aronson and John R. Stengel.

**FEE SUMMARY**

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

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 4,450.00
Forum Fees	= \$ 1,362.50
Total Fees	= \$ 6,312.50
Less payments	= \$ 6,700.00
Refund Due RBC Dain Rauscher, Inc.	= \$ 387.50

Respondent, Citigroup Global Markets, Inc., is liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 1,362.50
Total Fees	= \$ 5,812.50
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 1,362.50

Respondents, Gary L. Aronson and John R. Stengel, are jointly and severally liable for:

Forum Fees	= \$ 2,725.00
Total Fees	= \$ 2,725.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,725.00

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

**ARBITRATION PANEL**

M. W. Gear - Public Arbitrator, Presiding Chair  
Larry Allen Nissen - Public Arbitrator  
Howard N. Rubin - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

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M. W. Gear  
Public Arbitrator, Presiding Chair

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Signature Date

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Larry Allen Nissen  
Public Arbitrator

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Signature Date

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Howard N. Rubin  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair

11/29/06

Signature Date

Larry Allen Nissen  
Public Arbitrator

Signature Date

Howard N. Rubin  
Non-Public Arbitrator

Signature Date

12/6/06 N/A


Date of Service (For NASD office use only)

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M. W. Gear  
Public Arbitrator, Presiding Chair

  
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Larry Allen Nissen  
Public Arbitrator

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Signature Date

12/02/2006  
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Signature Date

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Howard N. Rubin  
Non-Public Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chair

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Signature Date

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Signature Date

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Howard N. Rubin  
Non-Public Arbitrator

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Signature Date

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