

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

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In the Matter of the Arbitration Between:

RBC Dain Rauscher Inc., Claimant v. Morgan Stanley DW Inc., Grace E. Kim, and  
Jared B. Salter, Respondents

Grace E. Kim and Jared B. Salter, Counter-Claimants v. RBC Dain Rauscher Inc.,  
Counter-Respondent

Case Number: 05-03854

Hearing Site: Los Angeles, California

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Nature of the Dispute: Member v. Member and Associated Persons  
Associated Persons v. Member

**REPRESENTATION OF PARTIES**

For Claimant / Counter-Respondent

RBC Dain Rauscher Inc.

("RBC Dain Rauscher Inc.):

Nancy L. Hendrickson, Esq.  
Steptoe & Johnson, LLP  
Chicago, Illinois

For Respondent Morgan Stanley DW Inc.

("Morgan Stanley DW Inc.):

Patrick J. Folan, Esq.  
St. John Wallace Brennan & Folan LLP  
Torrance, California

For Respondents / Counter-Claimants

Grace E. Kim and Jared B. Salter

("Grace E. Kim" and "Jared B. Salter):

Harold Bridges, Esq.  
Bridges & Bridges  
La Canada, California

**CASE INFORMATION**

Statement of Claim filed: July 26, 2005

Amended Statement of Claim filed: August 5, 2005

RBC Dain Rauscher Inc.'s Uniform Submission Agreement signed: July 26, 2005

Statement of Answer filed by Morgan Stanley DW Inc.: August 23, 2005

Morgan Stanley DW Inc.'s Uniform Submission Agreement signed: August 1, 2005

Statement of Answer and Counterclaim filed by Grace E. Kim and Jared B. Salter:  
August 5, 2005

Amended Answer and Counterclaim filed by Grace E. Kim and Jared B. Salter:  
August 23, 2005

RBC Dain Rauscher Inc.'s Statement of Answer to Counterclaim filed:  
September 9, 2005

Grace E. Kim's Uniform Submission Agreement signed: August 1, 2005

Jared B. Salter's Uniform Submission Agreement signed: undated

### **CASE SUMMARY**

RBC Dain Rauscher Inc. alleged misappropriation of trade secrets, unauthorized access to computer data in violation of California Penal Code section 502(c), interference with prospective economic advantage, unfair competition, breach of fiduciary duty, claim and delivery, conversion, trade libel, breach of duty of loyalty, and violation of the Computer Fraud & Abuse Act. RBC Dain Rauscher Inc.'s claims involved the alleged wrongful misappropriation and use of confidential and proprietary trade secrets.

Morgan Stanley DW Inc. denied the allegations of wrongdoing set forth in RBC Dain Rauscher Inc.'s Statements of Claim and asserted various affirmative defenses.

In their Answers to RBC Dain Rauscher Inc.'s Statements of Claim, Grace E. Kim and Jared B. Salter denied the allegations of wrongdoing set forth in RBC Dain Rauscher Inc.'s Statements of Claim and asserted various affirmative defenses.

In their Counterclaims, Grace E. Kim and Jared B. Salter alleged wrongful termination in violation of public policy, unfair business practices, and unfair competition.

In its Answer to the Counterclaims, RBC Dain Rauscher Inc. denied the allegations of wrongdoing set forth in Grace E. Kim and Jared B. Salter's Counterclaims.

### **RELIEF REQUESTED**

RBC Dain Rauscher Inc. requested a permanent injunctive order, unspecified compensatory and punitive damages, disgorgement of wrongfully acquired monies, and costs, including attorney's fees.

Morgan Stanley DW Inc. requested dismissal of RBC Dain Rauscher Inc.'s Statement of Claim in its entirety and costs.

In their Statements of Answer, Grace E. Kim and Jared B. Salter requested dismissal of RBC Dain Rauscher Inc.'s Statements of Claim and costs, including attorney's fees.

In their Counterclaims, Grace E. Kim and Jared B. Salter requested unspecified compensatory and punitive damages, and costs, including attorney's fees.

In its Answer to the Counterclaims, RBC Dain Rauscher Inc. requested dismissal of Grace E. Kim and Jared B. Salter's Counterclaims in its entirety.

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

On August 4, 2005, RBC Dain Rauscher Inc. filed a request to amend its Statement of Claim pursuant to the NASD Code of Arbitration Procedure ("Code") Rule 10328(c). On August 5, 2005, Morgan Stanley DW Inc. filed an objection to RBC Dain Rauscher Inc.'s request to amend the Statement of Claim. On August 8, 2005, Grace E. Kim and Jared B. Salter filed an objection to RBC Dain Rauscher Inc.'s request to amend the Statement of Claim. The Panel subsequently granted RBC Dain Rauscher Inc.'s request to amend the Statement of Claim.

On August 9 and 10, 2005, the Panel and parties held an evidentiary hearing on Claimant's request for a permanent injunction. On August 10, 2005, the Panel issued an Order stating that "Claimant has demonstrated a strong probability of success on the merits, but the request is denied." The Panel then scheduled additional hearing dates to determine damages and other issues.

On February 22, 2006, Morgan Stanley DW Inc. filed a Motion to Dismiss, and Grace E. Kim and Jared B. Salter filed a joint Motion to Dismiss RBC Dain Rauscher Inc.'s claims. On March 29, 2006, RBC Dain Rauscher Inc. filed an Opposition to the Motions to Dismiss. On April 6, 2006, Morgan Stanley DW Inc. filed a Reply in Support of Its Motion to Dismiss, and Grace E. Kim and Jared B. Salter filed a joint Reply in Support of Their Motion to Dismiss. On April 10, 2006, the Panel and parties held a telephonic

pre-hearing conference to hear oral argument on Morgan Stanley DW Inc., Grace E. Kim, and Jared B. Salter's Motions to Dismiss. On April 11, 2006, the Panel issued an Order denying without prejudice Morgan Stanley DW Inc. and Grace E. Kim's Motions to Dismiss, and granting with prejudice Jared B. Salter's Motion to Dismiss.

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**

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

- 1) RBC Dain Rauscher Inc.'s claims for misappropriation of trade secrets, tortious interference with prospective economic advantage, breach of fiduciary duty, and conspiracy to induce breach of fiduciary duty are denied.
- 2) RBC Dain Rauscher Inc.'s claims under California Penal Code section 502, for violation of the Computer Fraud and Abuse Act, claim and delivery, conversion, trade libel, and violation of California Business & Professions Code section 17200, are denied.
- 3) Grace E. Kim is liable to RBC Dain Rauscher Inc. for breach of the duty of loyalty, and shall pay RBC Dain Rauscher Inc. nominal damages in the amount of \$1.00.
- 4) Grace E. Kim is liable to and shall pay RBC Dain Rauscher Inc. interest on \$1.00 at the rate of 10% per annum from the date of this Award until the date that the Award is paid in full.
- 5) Morgan Stanley DW Inc. is liable to RBC Dain Rauscher Inc. for aiding and abetting and conspiring to breach the duty of loyalty owed by Grace E. Kim, and shall pay RBC Dain Rauscher Inc. nominal damages in the amount of \$1.00.
- 6) Morgan Stanley DW Inc. is liable to and shall pay RBC Dain Rauscher Inc. interest on \$1.00 at the rate of 10% per annum from the date of this Award until the date that the Award is paid in full.
- 7) Grace E. Kim's counterclaims for wrongful termination, unfair business practices, and common law unfair competition are denied.

- 8) Jared B. Salter's counterclaims for wrongful termination, unfair business practices, and common law unfair competition are denied.
- 9) The parties shall bear their respective costs, including attorney's fees.
- 10) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 500.00
Grace E. Kim and Jared B. Salter's Counterclaim filing fee	= \$ 250.00

#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm RBC Dain Rauscher Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,200.00
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

Accordingly, the member firm Morgan Stanley DW Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,200.00
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

### **Adjournment Fees**

The following adjournment fees are assessed:

December 6-7, 2005 hearing adjournment requested by all parties = \$ 1,000.00  
May 17-19, 2006 hearing adjournment requested by all parties = \$ 1,500.00  
October 25-27, 2006 hearing adjournment requested by all parties = \$ 1,500.00

1. The Panel assessed \$2,000.00 of the adjournment fees to RBC Dain Rauscher Inc.
2. The Panel assessed \$2,000.00 of the adjournment fees to Morgan Stanley DW Inc.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

The Panel assessed 100% of the additional arbitrator honoraria to RBC Dain Rauscher Inc. As such, RBC Dain Rauscher Inc. is assessed the following injunctive relief fees:

Injunctive relief surcharge	= \$2,500.00
Additional arbitrator honoraria	= \$1,250.00
<b>Total Injunctive Relief Fees</b>	<b>= \$3,750.00</b>

### **Forum Fees and Assessments**

The Panel assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. A 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:

1 Decision on discovery-related motions on the papers with one arbitrator @ \$200.00	= \$ 200.00
Parties submitted one joint discovery-related motion	
2 Pre-hearing conference sessions with one arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: November 1, 2005	1 session
January 31, 2006	1 session
4 Pre-hearing conference sessions with the Panel @ \$1,000.00/session	= \$ 4,000.00
Pre-hearing conferences: September 20, 2005	1 session
November 14, 2005	1 session
April 10, 2006	1 session
May 8, 2006	1 session
4 Injunctive relief hearing sessions @ \$1,000.00/session:	= \$ 4,000.00
Hearings: August 9, 2005	2 sessions
August 10, 2005	2 sessions
6 Hearing sessions @ \$1,000.00/session	= \$ 6,000.00
Hearings: January 15, 2007	2 sessions
January 16, 2007	2 sessions
January 17, 2007	2 sessions
<b>Total Forum Fees</b>	<b>= \$15,100.00</b>

1. The Panel assessed \$7,550.00 of the forum fees to RBC Dain Rauscher Inc.
2. The Panel assessed \$7,550.00 of the forum fees to Morgan Stanley DW Inc.

### **Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

RBC Dain Rauscher Inc. requested 614 photocopies @ \$0.25 each:       = \$ 153.50

### **Fee Summary**

1. RBC Dain Rauscher Inc. is charged with the following fees and costs:

Initial Filing Fee	= \$ 500.00
Balance due for Counterclaim Filing Fee pursuant to <i>Armendariz v. Foundation Health Psychcare</i> <i>Services, Inc.</i> 24 Cal. 4 <sup>th</sup> 83 (2000):	= \$ 50.00
Member Fees	= \$ 4,450.00
Adjournment Fee	= \$ 2,000.00
Injunctive Relief Fees	= \$ 3,750.00
Forum Fees	= \$ 7,550.00
Administrative Costs	= \$ 153.50
<b>Total Fees</b>	<b>= \$18,453.50</b>
<b>Less payments</b>	<b>= \$( 9,950.00)</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 8,503.50</b>

2. Morgan Stanley DW Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
Adjournment Fee	= \$ 2,000.00
Forum Fees	= \$ 7,550.00
<b>Total Fees</b>	<b>= \$14,000.00</b>
<b>Less payments</b>	<b>= \$( 4,950.00)</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 9,050.00</b>

3. Grace E. Kim and Jared B. Salter are jointly and severally charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 200.00
<b>Less payments</b>	<b>= \$ 0.00</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 200.00</b>

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



**ARBITRATION PANEL**

Michael R. Mitchell	-	Public Arbitrator, Presiding Chair
Suzanne Viau Chamberlain	-	Public Arbitrator
Robert S. Fash	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Michael R. Mitchell  
Chair, Public Arbitrator

1-24-07  
Signature Date

Suzanne Viau Chamberlain  
Public Arbitrator

Signature Date

Robert S. Fash  
Non-Public Arbitrator

Signature Date

1/25/07  
Date of Service

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Suzanne Viau Chamberlain	-	Public Arbitrator
Robert S. Fash	-	Non-Public Arbitrator

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Chair, Public Arbitrator

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Signature Date

  
Suzanne Viau Chamberlain  
Public Arbitrator

  
Signature Date

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Robert S. Fash  
Non-Public Arbitrator

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Suzanne Viau Chamberlain	-	Public Arbitrator
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Chair, Public Arbitrator

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Signature Date

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Suzanne Viau Chamberlain  
Public Arbitrator

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Signature Date

  
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Robert S. Fash  
Non-Public Arbitrator

1/23/2007  
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Signature Date

1/25/07  
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Date of Service