

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

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In the Matter of the Arbitration Between:

George J. Dahl, Claimant v. RBC Dain Rauscher Inc., Respondent

RBC Dain Rauscher Inc., Counter-Claimant v. George J. Dahl, Counter-Respondent

Case Number: 05-04487

Hearing Site: Los Angeles, California

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Nature of the Dispute: Associated Person v. Member  
Member v. Associated Person

**REPRESENTATION OF PARTIES**

For Claimant and Counter-Respondent  
George J. Dahl (hereinafter referred to  
as "Dahl"):

Michael Blumenfeld, Esq.  
Catherine Rhodes, Esq.  
Freeman, Freeman & Smiley, LLP  
Los Angeles, California

For Respondent and Counter-Claimant  
RBC Dain Rauscher Inc. (hereinafter referred to  
as "RBC Dain Rauscher"):

Michael M. Gless, Esq.  
Keesal, Young & Logan  
Los Beach, California

**CASE INFORMATION**

Statement of Claim filed: August 25, 2005

Dahl's Uniform Submission Agreement signed: August 25, 2005

Statement of Answer and Counterclaim filed by RBC Dain Rauscher: October 3, 2005

Supplemental Answer filed by RBC Dain Rauscher: December 9, 2005

RBC Dain Rauscher's Uniform Submission Agreement signed: September 6, 2005

Statement of Answer to Counterclaim filed by Dahl: October 12, 2005

### **CASE SUMMARY**

In his Statement of Claim, Dahl alleged wrongful termination, violation of state law, defamation, intentional interference with prospective business advantage, and breach of implied covenant of good faith and fair dealing.

In its Statement of Answer, RBC Dain Rauscher denied the allegations of wrongdoing set forth in the Dahl's Statement of Claim and asserted various affirmative defenses.

In its Supplement to its Statement of Answer, RBC Dain Rauscher asserted an additional affirmative defense.

In its Counterclaim, RBC Dain Rauscher alleged indemnity and contribution and violation of NASD Rules.

In his Statement of Answer to RBC Dain Rauscher's Counterclaim, Dahl denied the allegations of wrongdoing set forth in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In his Statement of Claim, Dahl requested compensatory damages in an amount in excess of \$1,000,000.00, unspecified punitive damages, pre-judgment interest at the rate of 10% per annum, costs, attorney's fees, an accounting of all wages and benefits due and owing through date of termination, and expungement of his Form U-5.

In its Statement of Answer, RBC Dain Rauscher requested dismissal of the Dahl's Statement of Claim in its entirety and costs.

In its Counterclaim, RBC Dain Rauscher requested \$10,213.09 in compensatory damages, interest at the rate of 10% per annum from May, 2005, and costs.

In his Statement of Answer to RBC Dain Rauscher's Counterclaim, Dahl requested dismissal of the Counterclaim in its entirety and costs, including attorney's fees.

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

On December 9, 2006, RBC Dain Rauscher filed a Motion to Supplement its Statement of Answer to Dahl's Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(b). Dahl did not oppose RBC Dain Rauscher's proposed Supplement. On March 13, 2006, the Panel granted RBC Dain Rauscher's request to file its Supplement to its Statement of Answer.

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) Respondent RBC Dain Rauscher Inc. is liable to and shall pay Claimant George J. Dahl the sum of \$141,000.00 in compensatory damages.
- 2) This Award shall bear interest at the rate of 6% per annum on any balance that remains unpaid thirty (30) days after receipt hereof, unless a motion to vacate has been filed with a court of competent jurisdiction. If this award is the subject of a motion to vacate that is subsequently denied, this award shall bear interest at the rate of 6% per annum on any balance that remains unpaid from date of the court's order denying said motion to vacate.
- 3) The Panel recommends the following expungement and modification to Claimant George J. Dahl's Form U-5 filed May 2, 2005:
  - a) Under Section 3. Full Termination, Reason for Termination the current explanation "Violation of company policy with respect to executing a trade in a client account without prior authorization from the client" shall be expunged and replaced with "Negligent violation of company policy regarding discretionary trading without proper authorization. Not malicious or self-serving."
  - b) Under DRP response to number 7F(1), 4. Allegations shall be amended to add the following sentences to the current entry: "Actual support for the allegations was equivocal, as Mr. Dahl had an incomplete written authorization on file, not approved by the firm, plus oral instructions from the client for a specific sale and an open, unspecified purchase. Subsequent trades, although not malicious or self-serving, were grossly negligent and violated company policy."
  - c) Under DRP response to number 7E(2), Item 4. Allegations shall be amended to add the following sentence to the current entry: "Client allegations were not wholly supported, but company policy violation occurred nevertheless. See response to Question 7(F)(1) above."
- 4) The parties shall bear their respective costs, including attorney's fees.
- 5) Counter-Claimant RBC Dain Rauscher Inc.'s Counterclaim is denied in its entirety.
- 6) All other relief requested and not expressly granted, including Claimant George J. Dahl's request for punitive damages, 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
RBC Dain Rauscher's Counterclaim	= \$ 750.00

#### **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 is a party and the following fees are assessed:

Member Surcharge	= \$2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$5,000.00
<b>Total Member Fees</b>	<b>= \$8,550.00</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, that lasts four (4) hours or less. Fees associated with these proceedings are:

Five (5) Hearing sessions @ \$1,200.00/session	= \$6,000.00
Hearings:	
October 9, 2006	2 sessions
October 10, 2006	2 sessions
October 11, 2006	1 session
<b>Total Forum Fees</b>	<b>= \$6,000.00</b>

The Panel assessed the entire balance of the forum fees, in the amount of \$6,000.00 to Respondent/Counter-Claimant RBC Dain Rauscher, 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.

Claimant/Counter-Respondent George J. Dahl requested 175 photocopies @ \$0.50 each	= \$ 87.50
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**Fee Summary**

1. Claimant/Counter-Respondent George J. Dahl is charged with the following fees and costs:

Filing Fee pursuant to <i>Armendariz v. Foundation Health Psychcare Services, Inc.</i> 24 Cal.4 <sup>th</sup> 83	= \$ 200.00
<u>Administrative Costs</u>	= \$ 87.50
Total Fees	= \$ 287.50
<u>Less payments</u>	= \$ (1,575.00)
<b>Refund Due from NASD Dispute Resolution</b>	<b>= \$ (1,287.50)</b>

2. Respondent/Counter-Claimant RBC Dain Rauscher, Inc. is charged with the following fees and costs:

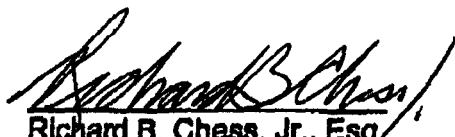
Counterclaim Filing Fee	= \$ 750.00
Balance due for Claimant's Filing Fee pursuant to <i>Armendariz</i>	= \$ 300.00
Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 6,000.00
Total Fees	= \$15,300.00
<u>Less payments</u>	= \$ (8,950.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,650.00</b>

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**

Richard B. Chess, Jr., Esq.	-	Public Arbitrator, Presiding Chair
Kirtley M. Thiesmeyer, Esq.	-	Public Arbitrator
Craig Robert Watanabe	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Richard B. Chess, Jr., Esq.  
Chair, Public Arbitrator

10/19/06  
Signature Date

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Kirtley M. Thiesmeyer, Esq.  
Public Arbitrator

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Signature Date

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Craig Robert Watanabe  
Non-Public Arbitrator

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Signature Date

10/20/06  
Date of Service

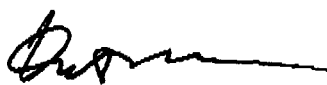
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Public Arbitrator

19 OCT 2006  
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Signature Date

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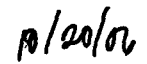
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