

**Award**  
**NASD Regulation, Inc.**

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In the Matter of the Arbitration Between:

Marvin L. Maddox, (Claimant) vs. Dain Rauscher Incorporated and J. Everett Airington (Respondents).

Case Number: 99-00433

Hearing Site: Dallas, Texas

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**REPRESENTATION OF PARTIES**

Claimant, Marvin Maddox ("Claimant"): Donald M. Feferman, Esq., Feferman & Rehler, L.L.P., Dallas, Texas.

Respondents, Dain Raucher Incorporated ("Dain Raucher") and J. Everett Airington ("Airington"), hereinafter collectively referred to as Respondents, Bruce W. Collins, Esq., Carrington, Coleman, Sloman & Blumenthal Dallas, Texas.

**CASE INFORMATION**

Statement of Claim filed on or about: January 29, 1999. First Addendum to Statement of Claim: August 26, 1999.

Claimant, Marvin L. Maddox, signed the Uniform Submission Agreement: January 26, 1999.

Statement of Answer filed by Respondents, Dain Raucher Incorporated and J. Everett Airington, on or about: April 21, 1999. Statement of Answer to First Addendum filed by Respondents, Dain Raucher Incorporated and J. Everett Airington, on or about: October 4, 1999

Respondent, Dain Raucher, signed the Uniform Submission Agreement: March 8, 1999, by David Fogel, its Associate General Counsel. Respondent, Airington, signed the Uniform Submission Agreement: April 20, 1999.

**CASE SUMMARY**

Claimant Marvin Maddox asserted causes of action including the following: unauthorized trading, churning, unsuitable trading, State and Federal statutes including the Texas Deceptive Trade Practices Consumer Protection Act, fraud, breach of fiduciary duty, negligence, failure to supervise, Regulatory violations, breach of contract, and misrepresentation. The causes of action relate to the handling of Claimant's IRA account.

Unless specifically admitted in its Answer, Respondents Dain Rauscher Incorporated and J. Everett Airington denied the allegations made in the Statement of Claim and asserted affirmative defenses including: failure to state a claim upon which relief can be granted; failure to plead misrepresentations or omission actionable under Federal securities statutes; failure to mitigate; ratification, estoppel and waiver.

#### RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$172,198.00
Punitive Damages	\$ 516,594.00
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	unspecified

Respondents Dain Rauscher Incorporated and J. Everett Airington requested:

Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief:	unspecified

#### OTHER ISSUES CONSIDERED AND DECIDED

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 and evidence presented at the hearing, and the post-hearing submissions, the Arbitration Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondents Dain Rauscher Incorporated and J. Everett Airington are jointly and severally liable for and shall pay the Claimant Marvin L. Maddox compensatory damages in the amount of \$61,600.00 (sixty one thousand six hundred dollars);
2. That Respondents Dain Rauscher Incorporated and J. Everett Airington are jointly and severally liable for and shall pay the Claimant Marvin L. Maddox attorneys' fees in the amount of thirty thousand five hundred dollars (\$30,500.00). In making the award of attorneys' fees, the panel heard and considered the arguments of counsel, all pleadings and documents submitted by counsel, and common law and state and federal statutes cited in counsels' briefs and pleadings, and finds that authority exists for an award of attorneys'

fees;

3. That Respondents Dain Rauscher Incorporated and J. Everett Airington are jointly and severally liable for and shall pay the Claimant Marvin L. Maddox costs in the amount of nine thousand dollars (\$9,000.00); and
4. That other than forum fees which are addressed below, any and all relief not specifically addressed herein, including punitive damages, is denied.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$250.00
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#### 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 a party and the Respondent's firm.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

#### 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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Six (6) Hearing sessions x \$1000.00	= \$6,000.00
Hearing Dates:	
November 16, 1999	2 sessions
November 17, 1999	2 sessions
November 18, 1999	2 sessions
Total Forum Fees	\$6,000.00

1. The Arbitration Panel has assessed \$3,600.00 of the forum fees jointly and severally to Respondents Dain Rauscher Incorporated and J. Everett Airington.
2. The Arbitration Panel has assessed \$2,400.00 of the forum fees to Claimant Marvin L. Maddox.

Fee Summary

1. Claimant, Marvin L. Maddox, be and hereby is solely liable for:
- |                                   |                     |
|-----------------------------------|---------------------|
| Initial Filing Fee                | = \$250.00          |
| Adjournment Fee                   | = \$0               |
| Forum Fees                        | = \$2,400.00        |
| <u>Administrative Costs</u>       | <u>= \$0</u>        |
| Total Fees                        | = \$2,650.00        |
| <u>Less payments</u>              | <u>= \$1,250.00</u> |
| Balance Due NASD Regulation, Inc. | = \$1,400.00        |
3. Respondent, Dain Raucher Incorporated, be and hereby is solely liable for:
- |                                   |                     |
|-----------------------------------|---------------------|
| Member Fees                       | = \$6,100.00        |
| Adjournment Fee                   | = \$ 0              |
| <u>Administrative Costs</u>       | <u>= \$ 0</u>       |
| Total Fees                        | = \$6,100.00        |
| <u>Less payments</u>              | <u>= \$6,100.00</u> |
| Balance Due NASD Regulation, Inc. | = \$0               |
| (from Dain Rauscher only)         |                     |
4. Respondents, Dain Rauscher Incorporated and J. Everett Airington, be and hereby are jointly and severally liable for:
- |                                   |                     |
|-----------------------------------|---------------------|
| <u>Forum fee</u>                  | <u>= \$3,600.00</u> |
| <u>Less payments</u>              | <u>= \$0</u>        |
| Balance Due NASD Regulation, Inc. | = \$3,600.00        |

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/ Daniel A. Kile

February 7, 2000

\_\_\_\_\_  
Daniel A. Kile  
Public Arbitrator, Presiding Chair

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

/s/ Charles F. Guittard

February 7, 2000

\_\_\_\_\_  
Charles F. Guittard  
Public Arbitrator

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

/s/ Charles T. Dix

February 8, 2000

\_\_\_\_\_  
Charles T. Dix  
Industry Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

NASD Arbitration 99-0433

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Fee Summary

1. Claimant, Marvin L. Maddox, be and hereby is solely liable for.

Initial Filing Fee	= \$250.00
Adjournment Fee	= \$0
Forum Fees	= \$2,400.00
<u>Administrative Costs</u>	= \$0
Total Fees	= \$2,650.00
<u>Less payments</u>	= \$1,250.00
Balance Due NASD Regulation, Inc.	= \$1,400.00

3. Respondent, Dain Raucher Incorporated, be and hereby is solely liable for:

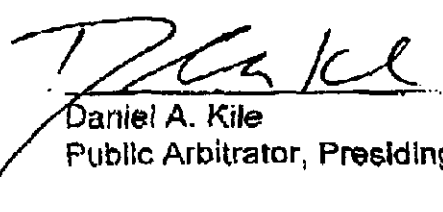
Member Fees	= \$6,100.00
Adjournment Fee	= \$0
<u>Administrative Costs</u>	= \$0
Total Fees	= \$6,100.00
<u>Less payments</u>	= \$6,100.00
Balance Due NASD Regulation, Inc. (from Dain Rauscher only)	= \$0

4. Respondents, Dain Rauscher Incorporated and J. Everett Airington, be and hereby are jointly and severally liable for:

<u>Forum fee</u>	= \$3,600.00
<u>Less payments</u>	= \$0
Balance Due NASD Regulation, Inc.	= \$3,600.00

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

  
 Daniel A. Kile  
 Public Arbitrator, Presiding Chair

February 7 2000  
 Signature Date

\_\_\_\_\_  
 Charles F. Guitard  
 Public Arbitrator

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

\_\_\_\_\_  
 Charles T. Dix  
 Industry Arbitrator

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

Date of Service (For NASD office use only)

Fee Summary


1. Claimant, Marvin L. Maddox, be and hereby is solely liable for:
- |                                   |              |
|-----------------------------------|--------------|
| Initial Filing Fee                | = \$250.00   |
| Adjournment Fee                   | = \$0        |
| Forum Fees                        | = \$2,400.00 |
| <u>Administrative Costs</u>       | = \$0        |
| Total Fees                        | = \$2,650.00 |
| <u>Less payments</u>              | = \$1,250.00 |
| Balance Due NASD Regulation, Inc. | = \$1,400.00 |
3. Respondent, Dain Rauscher Incorporated, be and hereby is solely liable for:
- |  |              |
|--|--------------|
| Member Fees  | = \$6,100.00 |
| Adjournment Fee  | = \$0        |
| <u>Administrative Costs</u>                                    | = \$0        |
| Total Fees   | = \$6,100.00 |
| <u>Less payments</u>   | = \$6,100.00 |
| Balance Due NASD Regulation, Inc.<br>(from Dain Rauscher only) | = \$0        |
4. Respondents, Dain Rauscher Incorporated and J. Everett Airington, be and hereby are jointly and severally liable for:
- |                                   |              |
|-----------------------------------|--------------|
| <u>Forum fee</u>                  | = \$3,600.00 |
| <u>Less payments</u>              | = \$0        |
| Balance Due NASD Regulation, Inc. | = \$3,600.00 |

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Daniel A. Kile  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Charles F. Guittard  
Public Arbitrator

2.7.00  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Charles T. Dix  
Industry Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

NASD Regulation, Inc.

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Fee Summary

1. Respondent, Marion J. Maddox, be and hereby is solely liable for:
- |                                   |              |
|-----------------------------------|--------------|
| Interim Fee                       | = \$250.00   |
| Adjustment Fee                    | = \$0        |
| Forum Fees                        | = \$2,400.00 |
| Administrative Costs              | = \$0        |
| Total Fees                        | = \$2,650.00 |
| Less Payments                     | = \$1,250.00 |
| Balance Due NASD Regulation, Inc. | = \$1,400.00 |
3. Respondent, Dain Rauscher Incorporated, be and hereby is solely liable for:
- |  |              |
|--|--------------|
| Interim Fees   | = \$6,100.00 |
| Adjustment Fee   | = \$0        |
| Administrative Costs   | = \$0        |
| Total Fees   | = \$6,100.00 |
| Less Payments  | = \$6,100.00 |
| Balance Due NASD Regulation, Inc.<br>(from Dain Rauscher only) | = \$0        |
4. Respondents, Dain Rauscher Incorporated and J. Everett Airington, be and hereby are jointly and severally liable for:
- |                                   |              |
|-----------------------------------|--------------|
| Forum Fees                        | = \$3,600.00 |
| Less Payments                     | = \$0        |
| Balance Due NASD Regulation, Inc. | = \$3,600.00 |

All balances are due to NASD Regulation, Inc.

Consent to Arbitration: Signatures\_\_\_\_\_  
Daniel A. Kile

Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date\_\_\_\_\_  
Charles F. Guttard

Public Arbitrator

\_\_\_\_\_  
Signature Date\_\_\_\_\_  
Charles T. Cox

Industry Arbitrator

\_\_\_\_\_  
Signature Date\_\_\_\_\_  
Date of Receipt (For NASD office use only)