

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

Hutchison Brothers Partnership, Ltd. v. Dain Rauscher, Inc. and R. Leon Lehr

Case Number: 99-867

Simplified Arbitration: Omaha, Nebraska

REPRESENTATION OF PARTIES

Claimant Hutchison Brothers Partnership, Ltd. ("Hutchison") hereinafter referred to as "Claimant": Charles W. Austin, Jr., Esq., Richmond, Virginia.

Respondents, R. Leon Lehr ("Lehr") and Dain Rauscher, Inc. ("DR"), hereinafter collectively referred to as "Respondents": Patrick B. Griffin, Esq., Kutack Rock, Omaha, Nebraska.

CASE INFORMATION

Statement of Claim filed on or about: February 22, 1999

Substituted Statement of Claim filed on or about: June 28, 1999

Claimant signed the Uniform Submission Agreement: February 4, 1999

Statement of Answer filed by Respondents on or about: June 15, 1999

Answer to Substituted Statement of Claim filed on or about: August 2, 1999

Respondent, R. Leon Lehr, signed the Uniform Submission Agreement: May 29, 1999

Respondent, Dain Rauscher, Inc., signed the Uniform Submission Agreement: May 5, 1999

Respondents' Motion to Dismiss or for Summary Judgment filed on or about: June 21, 1999

Claimant's Memorandum in Opposition to Respondents' Motion to Dismiss or for Summary Judgment filed on or about: August 30, 1999.

Respondents' Reply to Opposition to Motion to Dismiss or for Summary Judgment filed on or about: September 22, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: Breach of fiduciary duty, gross negligence, actual and constructive common law fraud, violations of §§ 2110, 2120, and 2310 of the NASD Conduct Rules. The causes of action relate to Claimant's investment in Pilgrim Adjustable Rate Securities Trust II (Pilgrim).

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claims are barred by all applicable statutes of limitations; Respondents cannot be held liable for the misrepresentations of others; the account at issue was a nondiscretionary account that does not give rise to a fiduciary relationship; the investment appeared suitable for

Claimant; Claimant was provided with a prospectus which disclosed the risks complained of in this matter; Nebraska law prohibits an award of punitive damages; there is no private right of action of violation of NASD Rules; Claimant's Statement of Claim fails to state a claim for relief; Claimant's Statement of Claim is barred by the doctrine of ratification; failure to mitigate; assumption of the risk; Claimant was contributorily and comparatively negligent or reckless in connection with their account; the Statement of Claim is barred under the doctrine of laches; the Statement of Claim is barred under the doctrine of laches; the Statement of Claim is barred by the doctrines of estoppel and waiver.

RELIEF REQUESTED

Claimant requested: damages of \$17,000.00, or alternatively rescission of Claimant's purchase of Pilgrim; plus interest at the legal rate or alternatively an amount representing what Claimant's money would have earned had it been invested appropriately; plus all costs, including reasonable attorneys' fees; plus punitive damages.

Respondents requested dismissal and unspecified relief.

OTHER ISSUES CONSIDERED AND DECIDED

The Claimant requested that the case be heard pursuant to Rule 10302 of the Code on June 28, 1999.

The Arbitrator denied Respondents' Motion to Dismiss or for Summary Judgment.

AWARD

Pursuant to Rule 10302 of the NASD Code of Arbitration Procedure, a single public arbitrator, James M. Allaire, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on February 22, 1999, and June 28, 1999. The undersigned arbitrator having considered the submissions of the parties has decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents R. Leon Lehr and Dain Rauscher, Inc. are jointly and severally liable for and shall pay to Claimant Hutchison Brothers Partnership Ltd, the sum of \$17,000.00 in compensatory damages;
- 2.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) That any relief not specifically enumerated, including, but not limited to, requests for attorneys' fees, costs, and punitive damages, is hereby denied with prejudice.

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 = \$100.00

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(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$400.00

Forum Fees and Assessments

The Arbitrator assesses forum fees of \$300.00 pursuant to the Code Rule 10302. The Arbitrator has assessed \$300.00 of the forum fees to Hutchison Brothers Partnership, Ltd.

Fee Summary

Claimant, Hutchison Brothers Partnership, Ltd., be and hereby is solely liable for:

Initial Filing Fee	= \$ 100.00
<u>Forum Fees</u>	= \$ 300.00
Total Fees	= \$ 400.00
<u>Less payments</u>	= \$ 375.00
Balance Due NASD Regulation, Inc.	= \$ 25.00

Respondent, Dain Rauscher, Inc., be and hereby is solely liable for:

<u>Member Fees</u>	= \$ 400.00
Total Fees	= \$ 400.00
<u>Less payments</u>	= \$ 400.00
Balance Due NASD Regulation, Inc.	= \$ 0.00

All balances are due to NASD Regulation, Inc.

Concurring Arbitrator's Signature

/s/ James M. Allaire
James M. Allaire
Public Arbitrator, Presiding Chair

04/26/00
Signature Date

04/26/00
Date of Service (For NASD office use only)

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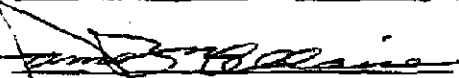
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Respondent, Dain Rauscher, Inc., be and hereby is solely liable for:

<u>Member Fees</u>	<u>= \$ 400.00</u>
Total Fees	= \$ 400.00
<u>Less payments</u>	<u>= \$ 400.00</u>
Balance Due NASD Regulation, Inc.	= \$ 0.00

All balances are due to NASD Regulation, Inc.

Concurring Arbitrator's Signature



James M. Allaire
Public Arbitrator, Presiding Chair

4/26/2000
Signature Date

Date of Service (For NASD office use only)