

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

Luann C. Nickolas, Claimant vs. Dain Rauscher, Inc., and Peter B. Miles, Respondents.

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Case Number: 99-03403                      Hearing Site: Milwaukee, Wisconsin

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**REPRESENTATION OF PARTIES**

Claimant, Luann C. Nickolas, "Nickolas", hereinafter referred to as "Claimant", was represented by John R. Teetaert, Esquire, of Menn, Nelson, Sharratt, Teetaert & Beisenstein, Ltd., Appleton, Wisconsin.

Respondents, Dain Rauscher, Inc., "Dain Rauscher", and Peter B. Miles, "Miles", hereinafter collectively referred to as "Respondents", were represented by Anne Berleman Kearney, Esquire, of Foley & Lardner, Milwaukee, Wisconsin.

**CASE INFORMATION**

Statement of Claim filed on or about: July 27, 1999.

Claimant signed the Uniform Submission Agreement: July 21, 1999.

Joint Statement of Answer filed by Respondents, Dain Rauscher and Miles, on or about: April 11, 2000.

Renee Polk, Associate Vice President for Respondent, Dain Rauscher, Inc., signed the Uniform Submission Agreement: November 10, 1999.

Respondent, Peter B. Miles, signed the Uniform Submission Agreement: November 10, 1999.

**CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; unauthorized trading; and churning. The claims involved transactions in mutual funds and in the following stocks: Northland Cranberries, Inc. and Heartport, Inc.

Unless specifically admitted in their Joint Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; contributory and comparative negligence; estoppel; waiver; and failure to mitigate.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages \$75,105.52

Claimant also amended her request at the hearing to include unspecified pre-judgment interest.

Respondents requested that Claimant's Statement of Claim be dismissed in its entirety, with prejudice. Additionally, Respondents requested costs, attorney's fees, and any other relief deemed appropriate by the Panel.

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

On October 10, 2000, Respondents, Dain Rauscher and Miles, filed a Motion for Summary Judgment with respect to Claimant's theory of damages. This Motion was **denied** at the hearing.

At the hearing, Respondents submitted Motions requesting that the Panel: Bar certain exhibits; enter a Directed Verdict; and Dismiss Claimant's churning claim. The Motions to Bar and for a Directed Verdict were **denied**. The Panel reserved ruling on the Motion to Dismiss until after the presentation of all evidence.

### **AWARD**

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

1. Respondents, Dain Rauscher, Inc., and Peter B. Miles, are *jointly and severally* liable for, and shall pay to Claimant, Luann C. Nickolas, **\$54,167.00** (Fifty-Four Thousand One Hundred Sixty-Seven Dollars and No Cents).
2. Respondent, Peter B. Miles, is *solely* liable for, and shall pay to Claimant, Luann C. Nickolas, **\$5,000.00** (Five Thousand Dollars and No Cents).
3. Post-judgment interest at the legal rate on the entire amount awarded shall accrue from the date of service of the Award until such time as the Award is honored.

Any and all relief not specifically granted herein, including punitive damages and pre-judgment interest, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 225
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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 Dain Rauscher, Inc.

Member surcharge	= \$1,000
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$1,500

#### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session with Panel x \$750	= \$ 750
Pre-hearing conference: April 4, 2000	1 session

Four (4) Hearing sessions x \$750	= \$ 3,000
Hearing Dates: October 16, 2000	2 sessions
October 17, 2000	2 sessions

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Total Forum Fees	= \$ 3,750
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The Panel has assessed \$1,875 in Forum Fees solely to Claimant, Luann C. Nickolas, and \$1,875 in Forum Fees solely to Respondent, Dain Rauscher, Inc.

### **Fee Summary**

1. Claimant, Nickolas, be and hereby is solely liable for:

Initial Filing Fee	= \$ 225
Forum Fees	= \$ 1,875
Total Fees	= \$ 2,100
Less payments	= \$ 975
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,125

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

Forum Fees	= \$ 1,875
Member Fees	= \$ 1,000
Pre-Hearing Process Fees	= \$ 600
Hearing Process Fees	= \$ 1,500
Total Fees	= \$ 4,975
<u>Less payments</u>	<u>= \$ 3,100</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,875

All balances are due to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

Thomas F. Mahoney  
Thomas F. Mahoney, Esq.  
Public Arbitrator, Presiding Chair

December 5, 2000  
Signature Date

Percy L. Julian, Jr.  
Percy L. Julian, Jr., Esq.  
Public Arbitrator

December 5, 2000  
Signature Date

Jeffrey S. Fannon  
Jeffrey S. Fannon  
Industry Arbitrator

December 4, 2000  
Signature Date

December 6, 2000  
Date of Service (For NASD-DR office use only)

NASD-DR Award

Luann C. Nickolas vs. Dain Rauscher, Inc. and Peter B. Miles

Arbitration # 99-03403

Page 4 of 4

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

Forum Fees	= \$ 1,875
Member Fees	= \$ 1,000
Pre-Hearing Process Fees	= \$ 600
Hearing Process Fees	= \$ 1,500
<u>Total Fees</u>	<u>= \$ 4,975</u>
<u>Less payments</u>	<u>= \$ 3,100</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,875

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

Thomas F. Mahoney  
Thomas F. Mahoney, Esq.  
Public Arbitrator, Presiding Chair

5 Dec 2000  
Signature Date

Percy L. Julian, Jr., Esq.  
Percy L. Julian, Jr., Esq.  
Public Arbitrator

Signature Date

Jeffrey S. Fannon  
Jeffrey S. Fannon  
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

## NASD-DR Award

Luzon C. Nicholas vs. Dain Rauscher, Inc. and Peter B. Miles


Arbitration # 99-03403

Page 4 of 4

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

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All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' SignaturesThomas F. Mahoney, Esq.  
Public Arbitrator, Presiding Chair  
Peter B. Julian, Jr., Esq.  
Public Arbitrator

Signature Date

  
December 5, 2000  
Signature DateJeffrey S. Fannon  
Industry Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

12/04/00 MON 15:59 FAX

NASD REGULATION

0006

## NASD-DR Award

Luann C. Nickolas vs. Dain Rauscher, Inc. and Peter B. Miles

Arbitration # 99-03403

Page 4 of 4

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

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Member Fees	= \$ 1,000
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Total Fees	= \$ 4,975
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Balance Due NASD Dispute Resolution, Inc.	= \$ 1,875

All balances are due to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Thomas F. Mahoney, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_  
Percy L. Julian, Jr., Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Jeffrey S. Fannon  
Industry Arbitrator

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

12-4-00

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Date of Service (For NASD-DR office use only)