

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

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In the Matter of the Arbitration Between

Name of Claimant

Shirley L. Drost, as Trustee of the  
Shirley L. Drost, IRA and as Trustee  
of the Drost Living Trust

Case No. 99-04530

Name of Respondents

Dain Rauscher Incorporated, f/k/a  
Dain Bosworth, Inc.; and  
Michael Lee Schrank

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**REPRESENTATION OF PARTIES**

Claimant Shirley L. Drost, as Trustee of the Shirley L. Drost, IRA and as Trustee of the Drost Living Trust ("Drost"), was represented by Robert B. Corris, Esq., of Robert B. Corris, S.C., located in Milwaukee, Wisconsin.

Respondents Dain Rauscher Incorporated, f/k/a Dain Bosworth, Inc. ("Dain") and Michael Lee Schrank ("Schrank"), were represented by Gordon G. Gee, Esq., of Seigfreid, Bingham, Levy, Selzer & Gee, located in Kansas City, Missouri.

**CASE INFORMATION**

Statement of Claim filed on or about: October 6, 1999.

Claimant signed the Uniform Submission Agreement: December 11, 1999.

Statement of Answer filed by Respondents on or about: May 24, 2000.

Respondent Dain signed the Uniform Submission Agreement: April 3, 2000.

Respondent Schrank signed the Uniform Submission Agreement: April 4, 2000.

**CASE SUMMARY**

Claimant asserted the following causes of action: violation of Section 10(b) and Rule 10b-5 of the Federal Securities Laws; violation of the Wisconsin Uniform Securities Law; and breach of common law duties. The causes of action relate to the unsuitable transactions in common stocks conducted by Schrank in Drost's accounts and the failure of Dain to properly supervise Schrank's conduct.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. Claimant's Statement of Claim failed to state any claim for which relief can be granted;
2. Claimant ratified, approved, accepted, acquiesced in, and confirmed the acts complained of in her Statement of Claim;
3. The claims are barred by the doctrine of assumption of risk because any losses were the result of economic and market conditions and Claimant's investment decisions;
4. Respondents at all times acted properly, in good faith and in a commercially reasonable manner with respect to Claimant's accounts;
5. All transactions complained of were conducted in accordance with applicable Exchange rules and regulations;
6. Claimant is estopped from bringing these claims because of her own acts and conduct;
7. Claimant has waived her rights to assert this claim;
8. If Claimant has suffered any damage, the damages are a result of Claimant's conduct or negligence; and,
9. Respondents did not proximately cause any damage to Claimant.

#### **RELIEF REQUESTED**

Claimant Drost requested compensatory damages of not more than \$ 100,000.00; punitive damages as deemed proper by the Panel; attorneys' fees in an unspecified amount; and other costs in an unspecified amount.

Respondent requested that the claim be denied in its entirety and that respondents be awarded their attorneys' fees, costs and expenses incurred in defending this claim.

#### **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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The Statement of Claim is dismissed and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those sums specifically enumerated herein; and
3. Any relief not specifically awarded is hereby 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 = \$ 225.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms 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 = \$ 1,000.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$ 1,500.00

#### **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 \$ 750.00 = \$ 750.00

Pre-hearing conference: September 12, 2000 1 session

Four (4) Hearing sessions x \$ 750.00 = \$ 3,000.00

Hearing Dates: February 7, 2001 2 sessions  
February 8, 2001 2 sessions

Total Forum Fees = \$ 3,750.00

The Panel has assessed \$ 1,875.00 of the forum fees to Claimant Shirley L. Drost, as Trustee of the Shirley L. Drost, IRA and as Trustee of the Drost Living Trust. In addition, the Panel has

assessed \$ 1,875.00 of the forum fees jointly and severally to Respondents Dain Rauscher Incorporated, f/k/a Dain Bosworth, Inc. and Michael Lee Schrank.

Fee Summary

Claimant Shirley L. Drost, as Trustee of the Shirley L. Drost, (RA and as Trustee of the Drost Living Trust is liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	= \$ 1,875.00
Total Fees	= \$ 2,100.00
<u>Less payments</u>	= \$ (975.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,125.00

Respondent Dain Rauscher Incorporated, f/k/a Dain Bosworth, Inc. is solely liable for:

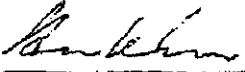
Member Fees	= \$ 3,100.00
<u>Less payments</u>	= \$ (3,100.00)
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

Respondents Dain Rauscher Incorporated, f/k/a Dain Bosworth, Inc. and Michael Lee Schrank are jointly and severally liable for:

Forum Fees	= \$ 1,875.00
<u>Less payments</u>	= \$ 0
Balance Due NASD Dispute Resolution, Inc.	= \$ 1,875.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

  
Herbert Neuer, Esq.  
Public Arbitrator, Presiding Chair

3-7-01  
Signature Date

  
Gordon B. Shneider, Esq.  
Public Arbitrator

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

  
Lee R. Wyatt  
Non-public Arbitrator

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

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

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Public Arbitrator, Presiding Chair



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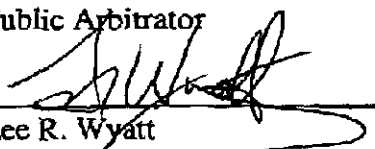
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