

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

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In the Matter of the Arbitration Between:

Paul F. Argus, d/b/a Charles Street Capital, (Claimant) vs. Dain Rauscher, Inc. and Annette Theno, (Respondents)

Case Number: 99-04580

Hearing Site: Boston, Massachusetts

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**REPRESENTATION OF PARTIES**

Claimant, Paul F. Argus, d/b/a Charles Street Capital, hereinafter referred to as "Claimant", appeared *pro se*. Previously represented by: Gary W. Smith, Esq., Burns & Levinson LLP, Boston, MA.

Respondents, Dain Rauscher, Inc. ("Dain") and Annette Theno ("Theno"), hereinafter collectively referred to as "Respondents": Mark J. Chasteen, Esq., Dorsey & Whitney LLP, Minneapolis, MN.

**CASE INFORMATION**

Statement of Claim filed on or about: October 8, 1999.

Reply to Counterclaim filed by Claimant on or about: January 13, 2000.

Claimant signed the Uniform Submission Agreement: October 8, 1999.

Statement of Answer filed by Respondents on or about: January 4, 2000.

Counterclaim filed by Dain on or about: January 4, 2000.

Dain signed the Uniform Submission Agreement.

Theno signed the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized purchases of stock in Hutchinson Technology and Network Solutions and violation of NASD Conduct Rule 2510(b).

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief may be granted and Claimant's claims are barred by the doctrines of estoppel, ratification, waiver, and unclean hands.

In its Counterclaim, Dain asserted the following causes of action: breach of contract and promissory estoppel.

Unless specifically admitted in his Reply, Claimant denied the allegations made in the Counterclaim and asserted the following defenses: the Counterclaim fails to state a claim upon which relief may be granted; Dain is barred from the requested relief due to its unclean hands; Dain is estopped, by its own conduct, from seeking any of the relief requested; and Dain is barred from any of the relief requested since its conduct and that of its agent were undertaken in violation of the NASD Conduct Rules.

### **RELIEF REQUESTED**

Claimant requested that the Arbitrator enter an order:

1. Ordering Dain to reverse the purported \$19,510.00 deficit from his account and dismiss the lawsuit it filed against Claimant in Hennipen County, Minnesota with prejudice; and
2. Award Claimant his damages including, without limitation, his attorneys' fees, expenses, filing fees, arbitration costs, and other damages.

Respondents requested that the Arbitrator enter an Award dismissing Claimant's Statement of Claim.

In its Counterclaim, Dain requested that the Arbitrator enter an Award in its favor as follows:

1. An Award of damages against Claimant in the amount of \$19,510.00 plus interest;
2. An Award of attorney's fees, costs, and disbursements in this action; and
3. Such other and further relief as the Arbitrator deems just and equitable.

In his Reply to the Counterclaim, Claimant requested that the Arbitrator enter an order dismissing Dain's Counterclaim and awarding Claimant the damages requested in his Statement of 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 positions of the Parties, and all briefs, and reply briefs submitted, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

1. I conclude that this dispute is the result of conduct for which both sides are responsible. Accordingly, I award in connection with all claims and counterclaims asserted in this case that the parties share equally in the loss on the Network Solutions Trade to the extent of \$9,755.00 each, without any costs or interest on these amounts. The parties are directed to make whatever adjustments are appropriate in their respective account balances to reflect this Award.
2. As to NASD fees, I further award that each party shall bear the burden of their own initial filing fees. The forum fees shall be shared equally.
3. As to the fees and expenses of the attorneys, I award that each shall be responsible for their own amounts incurred in this regard.
4. All other requests for relief by the parties are 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	= \$ 125.00
Counterclaim filing fee	= \$ 750.00

#### **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 at the time of the events giving rise to the dispute. In this matter, Dain Rauscher, Inc. is a party.

Member surcharge	= \$ 400.00
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**Forum Fees and Assessments**

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 900.00  
Pre-hearing conferences: September 11, 2000 1 session  
November 22, 2000 1 session

Two (2) Hearing sessions x \$450.00 = \$ 900.00

Hearing Date: November 29, 2000 2 sessions

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Total Forum Fees = \$1,800.00

1. The Arbitrator has assessed \$900.00 of the forum fees against Claimant.
2. The Arbitrator has assessed \$900.0 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$ 900.00
Total Fees	= \$1,025.00
Less payments	= \$1,025.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

2. Dain be and hereby is solely liable for:

Counterclaim Filing Fee	= \$ 750.00
Member Fees	= \$ 400.00
Total Fees	= \$1,150.00
Less payments	= \$1,150.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

3. Respondents be and hereby are jointly and severally liable for:

Forum Fees	= \$ 900.00
Total Fees	= \$ 900.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 900.00

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

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Arbitrator's Signature

  
Jay S. Siegel, Esq.  
Public Arbitrator

March 2, 2001  
Signature Date

March 02, 2001  
Date of Service (For NASD office use only)