



November 11, 2011

Richard A. Rohan, Esq.  
Carrington, Coleman, Sloman, Blumenthal  
901 Main Street  
Suite 5500  
Dallas, TX 75202

Subject: FINRA Dispute Resolution Arbitration Number 10-03097  
Mel H. Schonhorst v. RBC Capital Markets Corporation f/k/a RBC Dain Rauscher,  
Inc. and William Gumbert, Individually

Dear Mr. Rohan:

Enclosed please find the decision reached by the arbitrators in the above-referenced matter.

**Responsibility to Pay Monetary Award**

FINRA rules provide that all monetary awards shall be paid within 30 days of receipt unless a motion to vacate has been filed with a court of competent jurisdiction. An award shall bear interest from the date of the award:

- If not paid within 30 days of receipt;
- If the award is the subject of a motion to vacate which is denied; or
- As specified by the panel in the award.

Interest shall be assessed at the legal rate, if any, then prevailing in the state where the award was rendered, or at a rate set by the arbitrators.

**Expedited Suspension Proceedings for Non-Payment of Awards**

Article VI, Section 3 of the FINRA By-Laws and FINRA Rule 9554 permit FINRA to suspend or cancel the registration of any firm or associated person that fails to comply with a FINRA arbitration award.

Firms are required to notify FINRA in writing within 30 days of receipt of an award that they or their associated persons have paid or otherwise complied with the award, or to identify a valid basis for non-payment. We also request that prevailing claimants notify us in writing when their awards have not been paid within 30 days of receipt of the award.

Written notification concerning award compliance or lack thereof should be directed to:

David Carey  
FINRA Dispute Resolution  
One Liberty Plaza, 165 Broadway, 52nd Floor  
New York, NY 10006  
212-858-4333 (tel) | 301-527-4706 (fax) | david.carey@finra.org (email)

#### Right to File Motion to Vacate Award

FINRA rules provide that, unless the applicable law directs otherwise, all awards rendered are final and are not subject to review or appeal. Accordingly, FINRA has no authority to vacate this award. Any party wishing to challenge the award must make a motion to vacate the award in a federal or state court of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. § 10, or applicable state statute. There are limited grounds for vacating an arbitration award, and a party must bring a motion to vacate within the time period specified by the applicable statute. If you are not represented by counsel and wish to challenge the award, we urge you to seek legal advice regarding any rights or remedies available to you.

#### Forum Fees

You will receive under separate cover an invoice that reflects the fees assessed and any outstanding balance or refund due. Fees are due and payable to FINRA Dispute Resolution upon receipt of the invoice and should be sent to the address specified on the invoice. Any applicable refunds will also be sent under separate cover approximately 45 days after the case closes. All questions regarding payment of fees and refunds should be directed to FINRA Finance at (240) 386-5910.

#### Arbitrator Evaluation

FINRA encourages parties to complete Arbitrator Evaluation Forms at the conclusion of every case. We will utilize your comments in our ongoing efforts to evaluate and improve the services our forum provides. You can complete the Arbitrator Evaluation Form on our website at [www.finra.org/arbevaluation](http://www.finra.org/arbevaluation).

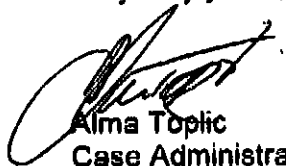
#### Party Submissions to Arbitrators After a Case Closes

FINRA rules provide that parties may not submit documents to arbitrators in cases that have been closed except under the following limited circumstances: 1) as ordered by a court; 2) at the request of any party within 10 days of service of an award, for typographical or computational errors, or mistakes in the description of any person or property referred to in the award; or 3) if all parties agree and submit documents within 10 days of service of an award. Any documents, if submitted, must be sent through FINRA.

**Questions Concerning Award**

Should you have any questions, please contact me at the phone number or email address provided below. Parties should not directly contact arbitrators under any circumstances.

Very truly yours,



Alma Toplic  
Case Administrator  
Phone: 312-899-4440  
Fax: 301-527-4857  
Alma.Toplic@finra.org

AS1:rv:LC09A  
idr: 09/14/2011

**RECIPIENTS:**

Richard A. Rohan, Esq., RBC Capital Markets LLC  
Carrington, Coleman, Sloman, Blumenthal, 901 Main Street, Suite 5500, Dallas, TX  
75202

Richard A. Rohan, Esq., William Joseph Gumbert  
Carrington, Coleman, Sloman, Blumenthal, 901 Main Street, Suite 5500, Dallas, TX  
75202

Robert M. Thornton, Esq., Mel H. Schonhorst  
Kilgore & Kilgore, PLLC, 3109 Carlisle St., Dallas, TX 75204

**AWARD**  
**FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimant

Mel H. Schonhorst

vs.

Case Number: 10-03097  
Hearing Site: Dallas, Texas

Names of Respondents

RBC Capital Markets Corporation  
f/k/a RBC Dain Rauscher, Inc. and  
William Gumbert

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**NATURE OF THE DISPUTE**

Associated Person vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Mel H. Schonhorst ("Claimant") was represented by Robert M. Thornton, Esq., Kilgore & Kilgore, PLLC, Dallas, Texas.

RBC Capital Markets Corporation f/k/a RBC Dain Rauscher, Inc. ("RBC") and William Gumbert ("Gumbert"), hereinafter collectively referred to as "Respondents," were represented by Richard A. Rohan, Esq., Carrington, Coleman, Sloman, Blumenthal, Dallas, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 2, 2010. The Submission Agreement of Claimant was signed on or about June 30, 2010. The Amended Statement of Claim was filed on or about January 27, 2011.

The Statement of Answer was filed jointly by Respondents on or about September 22, 2010. The Submission Agreement of RBC was signed on or about August 6, 2010. The Submission Agreement of Gumbert was signed on or about September 21, 2010. The Amended Statement of Answer was filed jointly by Respondents on or about January 6, 2011.

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### CASE SUMMARY

Claimant asserted the following causes of action: breach of contract; fraud; tortious interference with business relations; and defamation. The causes of action related to Claimant's allegations that Respondents breached the terms of Claimant's Employment Agreement, wrongfully terminated Claimant, and maliciously defamed him on his Form U5, causing Claimant to suffer an enormous loss of past and future earnings.

Unless specifically admitted their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages (in excess of)	\$3,000,000.01
Exemplary/Punitive Damages (in excess of)	\$2,000,000.01
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified
Other Non-Monetary Relief	Injunctive Relief
Other Non-Monetary Relief	Declaratory Judgment
Other Non-Monetary Relief	Expungement

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### OTHER ISSUES CONSIDERED & DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

On or about December 15, 2010, Claimant filed an Amended Statement of Claim. On or about January 6, 2011, Respondents jointly filed an Amended Statement of Answer. By letter dated January 6, 2011, FINRA informed the Claimant that after a Panel has been appointed no new or different pleadings may be filed without leave of the Panel. On or about January 12, 2011, Claimant filed an Unopposed Motion for Leave to Amend the Statement of Claim. In its Order dated January 27, 2011, the Panel granted Claimant's Unopposed Motion.

On or about July 27, 2011, Respondents filed a Motion to Amend Statement of Answer and Assert Counterclaims, Extend Deadline for Discovery, and Postpone Hearing. On or about August 6, 2011, Claimant filed a Response to Respondents' Motion. On or about August 9,

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2011, Respondents filed a Reply in Support of Their Motion. In its Order dated August 17, 2011, the Panel denied the Motion.

On or about August 18, 2011, Claimant filed a Request for an Explained Decision. On or about September 1, 2011, Respondents filed a Response to Claimant's Request for an Explained Decision. In its Order dated September 8, 2011, the Panel granted Claimant's Request for an Explained Decision.

At the hearing, the parties requested that the stenographic record of the hearing serve as the official transcript of the hearing. The Panel granted the request.

The Panel instructed the parties at the close of the September 22, 2011 hearing session to submit additional briefs on the topic of Attorney-Client Privilege. On or about October 17, 2011, Claimant filed a Brief regarding waiver of Attorney-Client Privilege. On or about October 17, 2011, Respondents filed a Brief on Attorney-Client Privilege.

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

- 1.) Respondent, RBC Capital Corporation f/k/a RBC Dain Rauscher, Inc., is liable for and shall pay to Claimant, Mel H. Schonhorst, the sum of \$4,400,000.00 in compensatory damages;
- 2.) Respondent, RBC Capital Corporation f/k/a RBC Dain Rauscher, Inc., is liable for and shall pay to Claimant, Mel H. Schonhorst, the sum of \$314,224.00 for Wealth Accumulation Plan;
- 3.) Respondent, RBC Capital Corporation f/k/a RBC Dain Rauscher, Inc., is liable for and shall pay to Claimant, Mel H. Schonhorst, the sum of \$483,871.00 for unpaid bonus;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) Any relief not specifically enumerated, including punitive damages, attorneys' fees, injunctive relief, declaratory judgment, and expungement, is hereby denied with prejudice.

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If the arbitrators have provided an explanation of their decision in this award, the explanation is for the information of the parties only and is not precedential in nature.

**The Request for Expungement:**

As the Claimant was seeking expungement, the panel choose to deal with the ever present and important issue of Attorney Client Privilege in order to hopefully obtain a glimmer of information necessary for our opinions to be voiced with confidence. We felt obligated to request Briefs from both parties, and after studying the briefs, ruled on Attorney Client Privilege with a very narrow scope in our decision. We hope that our ruling helps to further that privilege but also we saw the need to be able to gather testimony in this case that would help us to understand the highly effective representation by both sides.

Expungement, as the panel understands, is simply a process to remove from general review the records pertaining to a particular event, whereby the records of this earlier event are either removed or sealed thereby making the information unavailable through various repositories. When expungement is granted, the person whose record is expunged may, for most purposes, treat the event as if it never occurred.

The Expungement would require the removal of the statement placed on the Claimants U-5 form by the Respondent and testified to, regarding the status of the Claimant as a "subject of investigation" by a federal agency. This was verified at the proceeding, by the United States Attorney General (USAG) to be a true and correct statement at the time it was placed on the U-5 and still, as of the close of the hearing, to be considered true and correct. We firmly believe that removal of this statement is not possible at this time, since the statute of limitations has not run as a possible action by the federal agency against the Claimant.

Expungement of this statement will in no way change history or "un-ring" the bell. We suggest that at a future time the Claimant could seek an amended Form shedding light on the situation at the end of the pending FBI / USAG investigation.

The panel has had an opportunity to consider, during the presentation of evidence, the facts that oppose this decision not to grant expungement.

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### The Award:

The award in this proceeding has three parts, although two of them being financially equal to the eye. The panel begins with Compensatory damages awarded, \$4,400,000.00 (Four Million Four hundred thousand dollars and no/cents). This amount was divided by the panel into two equal segments. The first \$2,200,000.00 (Two Million Two hundred thousand dollars and no/cents) is the award from the panel for what the panel believes to be income lost from the date of Claimant's termination through the first date of this hearing September 19, 2011. The second half of this award is an equal amount of money \$2,200,000.00 (Two Million Two hundred thousand dollars and no/cents) for what we consider to be potential lost earnings from the date of the hearing to a retirement age of 67.

The third section of the award is simply the return to the Claimant of his Wealth Accumulation Plan balance, \$314,224.00 as presented to the panel at or about the time of his release from employment and \$483,871.00 as the unpaid portion of his Bonus Plan. To be sure, the panel understood the damage calculation as provided by the Claimants' expert witness, but decided to make this award simple and direct.

We came to our conclusion that a financial award was necessary and due Claimant as we unanimously believe that the events preceding Claimants termination would warrant a different outcome based on facts presented and circumstances reviewed by the panel. We have an opinion that had the termination of employment been of a mutual decision and with a more level headed approach other than the reliance of information from an industry publication and a possibly overly quick reaction to such "news" the panel would not have been requested to hear and rule on what we consider to be 'thin' evidence.

**TOTAL AWARD \$5,198,095.00 (Five Million, One hundred Ninety Eight thousand, ninety five dollars and no/cents).**

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

FINRA Dispute Resolution will retain the non-refundable filing fee\* for each claim:



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Initial Claim filing fee = \$ 1,800.00

*\*The filing fee is made up of a non-refundable and a refundable portion.*

### **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 persons at the time of the event giving rise to the dispute. Accordingly, as a party, RBC Capital Markets Corporation f/k/a RBC Dain Rauscher, Inc. is assessed the following:

Member surcharge	= \$ 3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

### **Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

One (1) Decision on discovery-related motion on the papers with one (1) arbitrator @ \$200.00	= \$ 200.00
<u>Claimant submitted one (1) discovery-related motion</u>	
<b>Total Discovery-Related Motion Fees</b>	<b>= \$ 200.00</b>

The Panel has assessed \$100.00 of the discovery-related motion fees to Mel H. Schonhorst.

The Panel has assessed \$100.00 of the discovery-related motion fees to RBC Capital Markets Corporation f/k/a RBC Dain Rauscher, Inc.

### **Contested Motion for Issuance of a Subpoena Fees**

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena with three (3) arbitrators @ \$200.00 (maximum of \$600)	= \$ 600.00
<b>Total Contested Motion for Issuance of Subpoenas Fees</b>	<b>= \$ 600.00</b>

The Panel has assessed \$300.00 of the contested motion for issuance of subpoenas fees to Mel H. Schonhorst.

The Panel has assessed \$300.00 of the contested motion for issuance of subpoenas fees to RBC Capital Markets Corporation f/k/a RBC Dain Rauscher, Inc.

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### Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each hearing session conducted. A 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:

Two (2) Pre-hearing sessions with Panel x \$1,200.00		= \$	2,400.00
Pre-hearing conferences:	January 27, 2011	1 session	
	September 6, 2011	1 session	
Sixteen (16) Hearing sessions x \$1,200.00		= \$	19,200.00
Hearing Dates:	September 19, 2011	2 sessions	
	September 20, 2011	2 sessions	
	September 21, 2011	2 sessions	
	September 22, 2011	2 sessions	
	November 1, 2011	3 sessions	
	November 2, 2011	3 sessions	
	November 4, 2011	2 sessions	
<b>Total Hearing Session Fees</b>			<b>= \$ 21,600.00</b>

The Panel has assessed \$10,800.00 of the hearing session fees to Mel H. Schonhorst.

The Panel has assessed \$10,800.00 of the hearing session fees to RBC Capital Markets Corporation f/k/a RBC Dain Rauscher, Inc.

All balances are payable to FINRA Dispute Resolution and are due upon receipt.

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**ARBITRATION PANEL**

Phillip L. Scheldt - Public Arbitrator, Presiding Chair  
Lawrence R. Maxwell, Jr. - Public Arbitrator  
Kenneth D. Bingham - Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Concurring Arbitrators' Signatures:**

/s/ Phillip L. Scheldt  
Phillip L. Scheldt  
Public Arbitrator, Presiding Chair

November 10, 2011  
Signature Date

/s/ Lawrence R. Maxwell, Jr.  
Lawrence R. Maxwell, Jr.  
Public Arbitrator

November 10, 2011  
Signature Date

/s/ Kenneth D. Bingham  
Kenneth D. Bingham  
Non-Public Arbitrator

November 10, 2011  
Signature Date

November 11, 2011  
Date of Service (For FINRA office use only)

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**ARBITRATION PANEL**

Phillip L. Scheidt - Public Arbitrator, Presiding Chair  
Lawrence R. Maxwell, Jr. - Public Arbitrator  
Kenneth D. Bingham - Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

Concurring Arbitrators' Signatures:

  
\_\_\_\_\_  
Phillip L. Scheidt  
Public Arbitrator, Presiding Chair

11/10/14  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Lawrence R. Maxwell, Jr.  
Public Arbitrator

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

\_\_\_\_\_  
Kenneth D. Bingham  
Non-Public Arbitrator

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

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

FINRA Dispute Resolution  
Arbitration No. 10-03087  
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**ARBITRATION PANEL**

Phillip L. Scheldt - Public Arbitrator, Presiding Chair  
Lawrence R. Maxwell, Jr. - Public Arbitrator  
Kenneth D. Bingham - Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Concurring Arbitrators' Signatures:**

\_\_\_\_\_  
Phillip L. Scheldt  
Public Arbitrator, Presiding Chair

*LR Maxwell Jr*

\_\_\_\_\_  
Lawrence R. Maxwell, Jr.  
Public Arbitrator

\_\_\_\_\_  
Kenneth D. Bingham  
Non-Public Arbitrator

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

*11-10-11*

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

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

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

FINRA Dispute Resolution  
Arbitration No. 10-03007  
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**ARBITRATION PANEL**

Phillip L. Scheidt - Public Arbitrator, Presiding Chair  
Lawrence R. Maxwell, Jr. - Public Arbitrator  
Kenneth D. Bingham - Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.


**Concurring Arbitrators' Signatures:**

\_\_\_\_\_  
Phillip L. Scheidt  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Lawrence R. Maxwell, Jr.  
Public Arbitrator

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

  
\_\_\_\_\_  
Kenneth D. Bingham  
Non-Public Arbitrator

11-10-11  
\_\_\_\_\_  
Signature Date

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