

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

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**In the Matter of the Arbitration Between:**

**Plycraft Industries, Inc.. Claimant v. Banc of America Investment Services Inc. and Carlos Escobar, Respondents**

**Case Number: 00-05709**

**Hearing Site: Los Angeles, California**

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**REPRESENTATION OF PARTIES**

**For Claimant:**

**Maurice Wainer, Esq.  
Snipper, Wainer & Markoff  
Los Angeles, California**

**For Respondents:**

**Michael J. Lawson, Esq.  
Steefel Levitt & Weiss  
San Francisco, California**

**CASE INFORMATION**

**Statement of Claim filed: December 20, 2000.**

**Claimant's Uniform Submission Agreement signed: January 8, 2001.**

**Joint Statement of Answer filed by Respondents Banc of America Investment Services Inc. and Carlos Escobar: March 27, 2001.**

**Respondents' Uniform Submission Agreement signed: None signed.**

**CASE SUMMARY**

**Claimant alleged breach of fiduciary duty, fraud, suitability, failure to supervise, unauthorized trading, violation of NASD rules, breach of the covenant of good faith and fair dealing, and negligence in connection with investments in various mutual funds.**

**Respondents jointly denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.**

### **RELIEF REQUESTED**

Claimant requested \$232,001.00 compensatory damages plus interest at 10% per annum, punitive damages, attorneys' fees and costs.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety and reimbursement of costs.

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

Respondents Banc of America Investment Services Inc. and Carlos Escobar did not file with the NASD Dispute Resolution, Inc. a properly executed submission agreement but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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

- 1) Banc of America Investment Services, Inc. is liable and shall pay to Claimant \$50,000.00 in compensatory damages.
- 2) Claimant's request for punitive damages is denied.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) All other relief requested and not expressly granted is denied.

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Carlos Escobar's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Carlos Escobar must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Banc of America Investment Services, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 2,500.00</u>
Total Member Fees	= \$ 4,600.00

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

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: September 5, 2001 1 session	

(8) Hearing sessions @ \$1,125.00/session	= \$ 9,000.00
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Hearings:	January 15, 2002	2 sessions
	January 16, 2002	2 sessions
	January 17, 2002	2 sessions
	January 18, 2002	2 sessions

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Total Forum Fees	= \$ 10,125.00
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1. The Panel assessed \$ 5,062.50 of the forum fees to Claimant.
2. The Panel assessed \$ 5,062.50 of the forum fees to Respondent Banc of America Investment Services, Inc.

### Administrative Costs

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimant requested: 54 photocopies @ \$0.50 = \$ 27.00

Banc of America Investment Services, Inc. requested:

Photocopies: 45 @ \$0.50	= \$ 22.50
Additional Awards	= \$ 70.00

### Fee Summary

- 1. Claimant Plycraft Industries, Inc. is charged with the following fees and costs:**

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 5,062.50
Administrative Costs	= \$ 27.00
<b>Total Fees</b>	<b>= \$ 5,389.50</b>
<b>Less payments</b>	<b>= \$(1,575.00)</b>
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 3,814.50</b>

2. Respondent Banc of America Investment Services, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,600.00
Forum Fees	= \$ 5,062.50
Administrative Costs	= \$ 92.50
<b>Total Fees</b>	<b>= \$ 9,755.00</b>
<u>Less payments</u>	<u>= \$ (4,670.00)</u>
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 5,085.00</b>

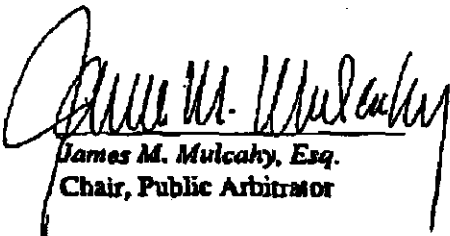
All balances are payable to NASD Dispute Resolution, Inc. and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

NASD Dispute Resolution, Inc.  
 Arbitration No. 00-05709  
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**ARBITRATION PANEL**

<i>James M. Mulcahy, Esq.</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>George Hubner</i>	-	<i>Public Arbitrator</i>
<i>Donald T. Meder</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signature(s)**

  
*James M. Mulcahy, Esq.*  
 Chair, Public Arbitrator

*March 1, 2002*  
 Signature Date

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*George Hubner*  
 Public Arbitrator

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

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*Donald T. Meder*  
 Non-Public Arbitrator

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

*3-1-02*  
 Date of Service


NASD Dispute Resolution, Inc.  
Arbitration No. 00-05709  
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<i>George Hubner</i>	-	<i>Public Arbitrator</i>
<i>Donald T. Meder</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signature(s)**

*James M. Mulcahy, Esq.*  
Chair, Public Arbitrator

  
*George Hubner*  
Public Arbitrator

*Donald T. Meder*  
Non-Public Arbitrator

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Signature Date

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George Hubner  
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- Public Arbitrator, Presiding Chair  
- Public Arbitrator  
- Non-Public Arbitrator

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Chair, Public Arbitrator

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George Hubner  
Public Arbitrator

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Signature Date

  
Donald T. Meder  
Non-Public Arbitrator

2-28-02  
Signature Date

3-1-02  
Date of Service