

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

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In the Matter of the Arbitration Between:

Richard Hoefer, Claimant v. Banc of America Securities, LLC, Respondent

Case Number: 01-02018

Hearing Site: San Francisco, California

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**REPRESENTATION OF PARTIES**

For Claimant:

Michael Q. Eagan, Esq.  
Michael T. Welch, Esq.  
William J. Stafford, Esq.  
Law Offices of Michael Q. Eagan  
San Francisco, California

For Respondent:

Peter R. Boutin, Esq.  
Kelly J. Moynihan, Esq.  
Keesel, Young & Logan  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: April 20, 2001

Claimant's Uniform Submission Agreement: April 20, 2001

Statement of Answer filed by Respondent: June 19, 2001

Respondent's Uniform Submission Agreement signed: May 21, 2001

**CASE SUMMARY**

Claimant alleged negligent misrepresentation, breach of fiduciary duty, constructive fraud, negligence and breach of contract, involving the common stock of eToys, Inc.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$15,000,000.00 and costs, including attorney's fees.

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

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

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. Respondent is liable to and shall pay Claimant the sum of \$487,500.00 in compensatory damages.
2. Respondent is liable to and shall pay Claimant interest in the amount of \$90,173.00.
3. The parties shall bear their respective costs, including attorney's fees.
4. All other relief requested and not expressly granted is denied.

### **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	= \$ 600.00
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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 Securities, LLC is a party and the following fees are assessed:

Member Surcharge	= \$ 3,600.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$ 5,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 9,200.00</b>

#### **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 Panel.

The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: December 04, 2001 1 session	

Seventeen (17) Hearing sessions @ \$1,200.00/session	= \$20,400.00
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Hearings:	April 19, 2002	2 sessions
	April 22, 2002	2 sessions
	April 23, 2002	2 sessions
	April 25, 2002	2 sessions
	April 26, 2002	2 sessions
	May 03, 2002	2 sessions
	May 06, 2002	2 sessions
	May 13, 2002	2 sessions
	June 6, 2002	1 session

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<b>Total Forum Fees</b>	<b>= \$21,600.00</b>
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The Panel assessed \$21,600.00 of the forum fees to Respondent Banc of America Securities, LLC.

**Fee Summary**

1. Claimant Richard Hoefer is charged with the following fees and costs:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$( 1,800.00)
<b>Refund Due from NASD Dispute Resolution</b>	<b>= \$( 1,200.00)</b>

2. Respondent Banc of America Securities, LLC, is charged with the following fees and costs:

<u>Member Fees</u>	= \$ 9,200.00
<u>Forum Fees</u>	= \$ 21,600.00
<u>Total Fees</u>	= \$ 30,800.00
<u>Less payments</u>	= \$( 9,200.00)
<b>Balance Due NASD Dispute Resolution, Inc.</b>	<b>= \$ 21,600.00</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.

**ARBITRATION PANEL**

Joseph A. Lasky, Esq.	-	Public Arbitrator, Presiding Chair
Gerald E. Ambinder, Esq.	-	Public Arbitrator
William S. Mailliard, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

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Joseph A. Lasky, Esq.  
Chair, Public Arbitrator

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Signature Date

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Gerald E. Ambinder, Esq.  
Public Arbitrator

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Signature Date

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William S. Mailliard, Esq.  
Non-Public Arbitrator

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Signature Date

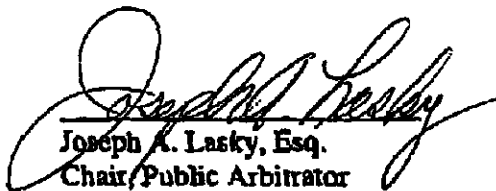
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Date of Service

**ARBITRATION PANEL**

Joseph A. Lasky, Esq.	-	Public Arbitrator, Presiding Chair
Gerald E. Ambinder, Esq.	-	Public Arbitrator
William S. Mailliard, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Joseph A. Lasky, Esq.  
Chair, Public Arbitrator

7/9/02  
Signature Date

Gerald E. Ambinder, Esq.  
Public Arbitrator

Signature Date

William S. Mailliard, Esq.  
Non-Public Arbitrator

Signature Date

7/15/02  
Date of Service

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**Concurring Arbitrators' Signatures**

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Joseph A. Lasky, Esq.  
Chair, Public Arbitrator



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Gerald E. Ambinder, Esq.  
Public Arbitrator

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Signature Date

JUL 15 2002

Signature Date

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William S. Mailliard, Esq.  
Non-Public Arbitrator

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Signature Date

7/15/02

Date of Service