

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Julie M. Radosevich, Claimant v. Banc of America Investment Services, Inc. and Frank F.P. Au-Yeung, Respondents

Case Number: 02-05041

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Timothy D. Murphy, Esq.
Law Offices of James Jay Seltzer
Emeryville, California

For Respondents:

Andrea Hackett Henningsen, Esq.
Steeffel, Levitt & Weiss
San Francisco, California

CASE INFORMATION

Statement of Claim filed: August 27, 2002

Claimant's Uniform Submission Agreement signed: August 26, 2002

Joint Statement of Answer filed by Respondents Banc of America Investment Services, Inc. ("BAI") and Frank F.P. Au-Yeung: December 30, 2002

Respondent BAI's Uniform Submission Agreement signed: December 30, 2002

Respondent Frank F.P. Au-Yeung's Uniform Submission Agreement signed: December 27, 2002

CASE SUMMARY

Claimant alleged the following claims with respect to investments in Fidelity Technology Fund:
1) Negligence; 2) Omissions and Misrepresentations of Material Fact – Common Law Fraud; 3) Respondeat Superior; 4) Breach of Contract; 5) The Implied Covenant of Good Faith and Fair Dealing; 6) Unfair Competition; and 7) Violation of the Consumer Legal Remedies Act.

Respondents denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents also asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested:

1. Compensatory damages in the amount of at least \$33,000.00;
2. Pre-judgment interest at the California statutory rate of 10%;
3. Punitive damages in the amount of \$100,000.00;
4. Attorney's fees;
5. Costs; and
6. Such other and further relief as the Panel may deem just and appropriate.

Claimant also requested a reasoned decision by the Panel.

Respondents requested:

1. That Claimant's Statement of Claim be dismissed;
2. That Respondents be awarded their forum fees, attorneys' fees; and
3. Such other relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

On July 9, 2003, Claimant and Claimant's counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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, and Claimant's post-hearing submission, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) All claims by Claimant, including the claim for punitive damages, are dismissed.
- 2) Each party shall bear its own costs, including attorney's fees.

- 3) All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee = \$300.00

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 that gave rise to the dispute, claim, or controversy. Accordingly, BAI is a party and the following fees are assessed:

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
Total Member Fees	= \$5,200.00

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/Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: December 18, 2003	1 session
(6) Hearing sessions @ \$1,125.00/session	= \$6,750.00
Hearing: March 23, 2004	2 sessions
March 24, 2004	2 sessions
March 25, 2004	2 sessions
Total Forum Fees	= \$7,875.00

The Panel assessed \$3,937.50 in forum fees to Claimant.

The Panel assessed \$3,937.50 in forum fees jointly and severally to Respondents, BAI and Au-Yeung.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,937.50
Total Fees	= \$ 4,237.50
<u>Less Payments</u>	= \$ (1,425.00)
Balance Due NASD-DR	= \$ 2,812.50

2. Respondent BAI is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less Payments</u>	= \$ (5,200.00)
Balance Due NASD-DR	= \$ 0.00

3. Respondents BAI and Au-Yeung are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 3,937.50
<u>Less Payments</u>	= \$ (0.00)
Balance Due NASD-DR	= \$ 3,937.50

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

ARBITRATION PANEL

Matthew J. Williams	-	Public Arbitrator, Presiding Chair
Herbert Liberman	-	Public Arbitrator
Mark Aaron Jones	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

M Williams
Matthew J. Williams
Chair, Public Arbitrator

13 April 2004
Signature Date

Herbert Liberman
Public Arbitrator

Signature Date

Mark Aaron Jones
Non-Public Arbitrator

Signature Date

4/19/04
Date of Service

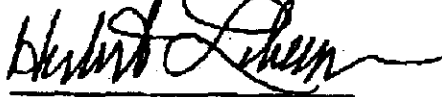
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Matthew J. Williams
Herbert Liberman
Mark Aaron Jones

Public Arbitrator, Presiding Chair
Public Arbitrator
Non-Public Arbitrator

Concurring Arbitrators' Signatures

Matthew J. Williams
Chair, Public Arbitrator



Herbert Liberman
Public Arbitrator

Signature Date

4-15-03

Signature Date

Mark Aaron Jones
Non-Public Arbitrator

Signature Date

4/19/04
Date of Service

ARBITRATION PANEL

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Herbert Liberman	-	Public Arbitrator
Mark Aaron Jones	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Matthew J. Williams
Chair, Public Arbitrator

Signature Date

Herbert Liberman
Public Arbitrator

Signature Date



Mark Aaron Jones
Non-Public Arbitrator

4/19/04
Signature Date

4/19/04
Date of Service