

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Robert G. Kaiser, Claimant v. Banc of America Investment Services, Inc., Julie G. Castle, Lisa K. Dry, David M. Winchell, Angela J. Tomassetti, Carisa Y. Arakaki, Susan J. Hechtlinger, Richard V. Downen, Karen Bahr, and David T. Mitchell, Respondents

Case Number: 02-07426

Hearing Site: Las Vegas, Nevada

Nature of Dispute: Associated Person v. Member Firm, Associated Persons and Non-Members

REPRESENTATION OF PARTIES

For Claimant:

Robert G. Kaiser
In Pro Per
Las Vegas, Nevada

For Respondents:

Elissa F. Cadish, Esq.
Bryce K. Kunimoto, Esq.
Hale Lane
Las Vegas, Nevada

CASE INFORMATION

Statement of Claim received: December 10, 2002

Claimant's Uniform Submission Agreement signed: December 2, 2002

Joint Statement of Answer filed by Respondents: March 17, 2003

Respondent Banc of America Investment Services, Inc.'s Uniform Submission Agreement signed:
March 13, 2003

Respondent Julie G. Castle's Uniform Submission Agreement signed: Not signed

Respondent Lisa K. Dry's Uniform Submission Agreement signed: Not signed

Respondent David M. Winchell's Uniform Submission Agreement signed: Not signed

Respondent Angela J. Tomassetti's Uniform Submission Agreement signed: Not signed

Respondent Carisa Y. Arakaki's Uniform Submission Agreement signed: Not signed

Respondent Susan J. Hechtlinger's Uniform Submission Agreement signed: Not signed

Respondent Richard V. Downen's Uniform Submission Agreement signed: Not signed

Respondent Karen Bahr's Uniform Submission Agreement signed: Not signed

Respondent David T. Mitchell's Uniform Submission Agreement signed: Not signed

CASE SUMMARY

Claimant's Statement of Claim alleged breach of contract, failure to pay commissions, failure to pay compensation, and libel or slander on Form U-5. Claimant's allegations concerned his termination of employment from Respondent Banc of America Investment Services, Inc.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$15,577.27, punitive damages in the amount \$475,000.00, costs, and attorney's fees. Claimant further requested the return of his personal files, return of his employee records and correction or expungement of information intentionally and erroneously filed on Claimant's Amendment disclosure DRP U-5.

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

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Julie G. Castle, Lisa K. Dry, David M. Winchell, Angela J. Tomassetti, Carisa Y. Arakaki, Susan J. Hechtlinger, and Richard V. Downen, Karen Bahr, and David T. Mitchell did not file with NASD Dispute Resolution, properly executed submission agreements; however, Respondents Julie G. Castle, Lisa K. Dry, David M. Winchell, Angela J. Tomassetti, Carisa Y. Arakaki, Susan J. Hechtlinger, and Richard V. Downen are required to submit to arbitration and, having answered the claim and appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

Respondents Karen Bahr and David T. Mitchell did not file with NASD Dispute Resolution, properly executed submission agreements; however, Respondents Karen Bahr and David T. Mitchell having answered the claim and 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) With respect to certain U5 amendments submitted by Banc of America Investment Services, the Panel recommends that the response to question 18 C(1) on Claimant's Form U-5 dated April 13, 2001 and the response to question 7E(3)(a) on claimant's Form U5 dated August 9, 2002 be changed to NO. Pursuant to NASD Notice to Members 99-09, Claimant Robert G. Kaiser must obtain confirmation from a court of competent jurisdiction before the NASD Central Registration Depository will execute the expungement directive.
- 2) The Panel recommends the expungement of the customer complaint Disclosure Reporting Page reporting details of a complaint filed by customer Nancy Kwon contained in Claimant's Form U-5 dated April 13, 2001 and Claimant's Form U5 dated August 9, 2002. Pursuant to NASD Notice to Members 99-09, Claimant Robert G. Kaiser must obtain confirmation from a court of competent jurisdiction before the NASD Central Registration Depository will execute the expungement directive.
- 3) All other claims asserted by Claimant are denied in their entirety.
- 4) Claimant's request for punitive damages is denied.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) 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 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 that 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	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

Adjournment Fees

The following adjournment fees are assessed:

September 29 & 30, 2003 adjournment jointly requested by the Parties	= \$ 1,125.00
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- 1) The Panel assessed \$562.50 of the adjournment fee to Claimant.
- 2) The Panel assessed \$562.50 of the adjournment fee to Respondent Banc of America Investment Services, Inc.

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:

Three (3) Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 3,375.00
Pre-hearing conference: June 17, 2003	1 session
September 24, 2003	1 session
November 17, 2003	1 session

Eight (8) Hearing sessions with the Panel @ \$ 1,125.00/session	= \$ 9,000.00
Hearings:	
January 6, 2004	2 sessions
January 7, 2004	2 sessions
January 8, 2004	2 sessions
January 9, 2004	2 sessions
Total Forum Fees	= \$ 12,375.00

- 1) The Panel assessed \$6,187.50 of the forum fees to Claimant.
- 2) The Panel assessed \$6,187.50 of the forum fees to Respondent Banc of America Investment Services, Inc.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 562.50
Forum Fees	= \$ 6,187.50
Total Fees	= \$ 7,050.00
Less payments	= \$ (1,425.00)
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

Member Fees	= \$ 5,200.00
Adjournment Fee	= \$ 562.50
Forum Fees	= \$ 6,187.50
Total Fees	= \$ 11,950.00
Less payments	= \$ (5,200.00)
Balance Due NASD Dispute Resolution	= \$ 6,750.00

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

ARBITRATION PANEL

Barbara L. Edin, Esq.	-	Public Arbitrator, Presiding Chair
Jordan H. Bodenstein, Esq.	-	Public Arbitrator
Vernon Barnum	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



BARBARA L. EDIN, ESQ.
Chair, Public Arbitrator

1/30/04
Signature Date

JORDAN H. BODENSTEIN, ESQ.
Public Arbitrator

Signature Date

VERNON BARNUM
Non-Public Arbitrator

Signature Date

January 30, 2004
Date of Service

ARBITRATION PANEL

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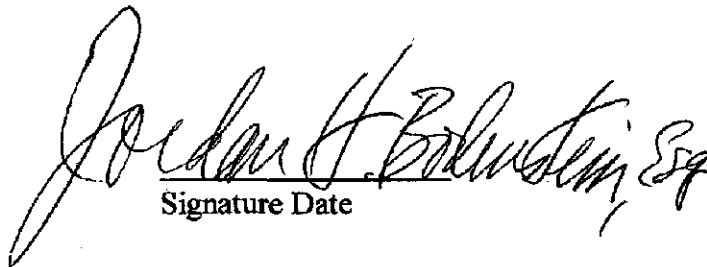
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Public Arbitrator

Signature Date



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Signature Date

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