

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Magdalena Trotter Trustee for the Magdalena Trotter Trust, Claimant v. Janis M. Wyatt and Banc of America Investment Services, Inc., Respondents

Case Number: 03-00975

Hearing Site: Seattle, Washington

Nature of the Dispute: Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

For Claimant:

Magdalena Trotter
In Preporia Persona
Woodland, Washington

For Respondents:

Craig Miller, Esq.
Davis Wright Tremaine LLP
Seattle, Washington

CASE INFORMATION

Statement of Claim received: February 10, 2003

Claimant's Uniform Submission Agreement signed: February 4, 2003

Joint Statement of Answer filed by Respondents Janis M. Wyatt and Banc of America Investment Services, Inc.: May 14, 2003

Respondent Janis M. Wyatt's Uniform Submission Agreement signed: May 7, 2003

Respondent Banc of America Investment Services, Inc.'s Uniform Submission Agreement signed:
Not signed

CASE SUMMARY

Claimant's Statement of Claim alleged negligence, misrepresentation, non-disclosure, omission of facts, unsuitability, clearing dispute, and indemnification. The allegations involved the purchase of Worldcom, Inc. bonds.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$47,500.00, punitive damages in the amount of \$5,212.00, and costs, including attorney's fees.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, and costs including attorney's fees. Respondents also requested an Award expressly providing for expungement of all references to the above-captioned arbitration from Respondent Janis M. Wyatt's registration records maintained by the NASD Central Registration Depository ("CRD").

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Banc of America Investment Services, Inc. did not file with the NASD Dispute Resolution a properly executed submission agreement; however, Respondent is required to submit to arbitration and having answered the claim, and appeared and testified at the hearing is bound by the determination of the Arbitration Panel on all issues submitted.

On October 7, 2003, Respondents moved the Arbitration Panel to dismiss Claimant's claims pursuant to NASD Code of Arbitration ("the Code") Rule 10301(d) stating that Claimant was a member of a pending class action lawsuit against WorldCom, Inc. On October 24, 2003 a telephonic pre-hearing conference was held to present arguments on Respondents Motion to Dismiss. In attendance were the Claimant, Respondents and the Arbitration Panel. After due deliberation, the Arbitration Panel denied Respondents Motion to Dismiss.

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) Respondents Janis M. Wyatt and Banc of America Investment Services, Inc. are jointly and severally liable to and shall pay the Claimant \$3,840.41 in compensatory damages. Respondent Janis M. Wyatt is a professional investment advisor with a duty to know her customer and to make suitable investment recommendations. Based on the information Ms. Wyatt had at the time of sale, per the Brokerage Account Application, an investment of \$47,500.00 into one security was unsuitable because it lacked diversification. Nevertheless, Claimant must take responsibility for her own decisions, and has the duty to review the statements she received from Respondent Banc of America Investment Services, Inc. Once Ms. Trotter knew, or should have known, that she was not satisfied with the term of the bonds, she had a duty to mitigate her damages and sell the bonds. Thus, her damages are reduced by the amount she would have recovered had she sold the bonds in a timely manner.
- 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.

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	= \$ 225.00
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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	= \$ 1,100.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 1,700.00</u>
Total Member Fees	= \$ 3,550.00

Adjournment Fees

The following adjournment fees are assessed:

December 4, 2003 Hearing Date, adjournment requested by Respondents	= \$ 750.00
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The Panel assessed the adjournment fee jointly and severally to Respondents.

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 the parties and the Panel. The following fees are assessed:

Three (3) Pre-hearing conference sessions with the Panel @ \$750.00/session	= \$ 2,250.00
Pre-hearing conferences:	
September 19, 2003	1 session
October 24, 2003	1 session
December 4, 2003	1 session

Two (2) Hearing sessions @ \$750.00/session	= \$ 1,500.00
Hearings:	
March 3, 2004	2 sessions

Total Forum Fees	= \$ 3,750.00
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The Panel assessed \$3,750.00 of the forum fees jointly and severally to Respondents.

Fee Summary

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

Initial Filing Fee	= \$ 225.00
<u>Less payments</u>	= \$ (975.00)
Refund Due Claimant	= \$ (750.00)

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

Member Fees	= \$ 3,550.00
<u>Less payments</u>	= \$ (3,550.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Janis M. Wyatt and Banc of America Investment Services, Inc. are charged jointly and severally with the following fees and costs:

Adjournment Fee	= \$ 750.00
<u>Forum Fees</u>	= \$ 3,750.00
Total fees	= \$ 4,500.00
<u>Less payments</u>	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 4,500.00

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:

<i>Sally Phillips Pasette</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Robert M. Stein</i>	-	<i>Public Arbitrator</i>
<i>Scott D. Rash</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures


SALLY PHILLIPS PASETTE
Chair, Public Arbitrator

3-15-04
Signature Date

ROBERT M. STEIN
Public Arbitrator

Signature Date

SCOTT D. RASH
Non-Public Arbitrator

Signature Date

3/15/04
Date of Service

ARBITRATION PANEL

<i>Sally Phillips Pasette</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Robert M. Stein</i>	-	<i>Public Arbitrator</i>
<i>Scott D. Rush</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

SALLY PHILLIPS PASETTE
Chair, Public Arbitrator

Signature Date

ROBERT M. STEIN
Public Arbitrator

3-14-04
Signature Date

SCOTT D. RASH
Non-Public Arbitrator

Signature Date

3/15/04
Date of Service

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ARBITRATION PANEL

Sally Phillips Pasette

Public Arbitrator, Presiding Chair

Robert M. Stein

Public Arbitrator

Scott D. Rush

Non-Public Arbitrator

Concurring Arbitrators' Signatures

SALLY PHILLIPS PASETTE
Chair, Public Arbitrator

Signature Date

ROBERT M. STEIN
Public Arbitrator

Signature Date


SCOTT D. RASH
Non-Public Arbitrator

3-15-04
Signature Date

3/15/04
Date of Service