

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimants
Phillip D. Murphy

Case Number: 03-01497

Name of the Respondents
Banc of America Securities, LLC
Bank of America, N.A.
Bank of America Corporation

Hearing Site: Charlotte, North Carolina

Nature of the Dispute: Associated Person v. Member and Non-Members.

REPRESENTATION OF PARTIES

Claimant, Phillip D. Murphy, hereinafter referred to as "Claimant", was represented by Edward T. Hinson, Jr., Esq. and Fred B. Monroe, Esq., James, McElroy & Diehl, P.A., Charlotte, North Carolina.

Respondents Banc of America Securities, LLC ("BAS"), Bank of America, N.A. ("BANA") and Bank of America Corporation ("BAC") hereinafter collectively referred to as "Respondents", were represented by Peter J. Covington, Esq., Helms, Mullis & Wicker, PLLC, Charlotte, North Carolina.

CASE INFORMATION

Temporary Restraining Order "(TRO)" issued by the Court on February 27, 2003.

Motion for Injunctive Relief filed by Claimant on March 4, 2003.

Respondents filed a Statement of Position in Response to Claimant's Motion for Injunctive Relief on March 27, 2003.

Statement of Claim filed on March 4, 2003.

Amended Statement of Claim filed on June 10, 2003.

Second Amended Statement of Claim filed on October 29, 2003.

Claimant signed the Uniform Submission Agreement on February 27, 2003.

Answer to Amended Statement of Claim filed on May 23, 2003.

A representative of Respondents signed the Uniform Submission Agreements on March 12, 2003.

Motion to Amend the Panel's Order filed by Claimant on June 11, 2003.

Respondents filed a Response to Motion to Amend the Panel's Order on June 27, 2003.

Claimant filed a Reply to Motion to Amend the Panel's Order on June 30, 2003.

Motion to Amend Statement of Claim filed by Claimant on September 23, 2003

Respondents filed a Response to the Motion to Amend Statement of Claim on October 10, 2003.
Claimant filed a Reply to Motion to Amend Statement of Claim on October 17, 2003.

Motions for Summary Judgment filed by Respondents on October 28, 2003.
Claimant filed a Response to Respondents' Motions for Summary Judgment on November 3, 2003.

CASE SUMMARY

Claimants asserted the following causes of action, among others: defamation; tortious interference with prospective economic advantage; unfair and deceptive trade practice; blacklisting; breach of contract; and, violation of North Carolina Wage and Hour Act. The causes of action relate to Claimant's employment and employment agreement with Respondents.

Unless specifically admitted in its Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: failure to state a claim upon which relief may be granted; Claimant's claims are barred by the doctrines of waiver, estoppel, and laches; failure to mitigate damages; Claimant's claims are barred by the statutes of limitations; and, contributory negligence.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$1,300,000.00; punitive damages; injunctive relief; treble damages; attorneys' fees; other costs; and expungement of U-5.

Respondents requested that the Statement of Claim be dismissed with prejudice and that the Arbitration Panel (the "Panel") assess all costs and expenses against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

On February 27, 2003, Claimant filed a Temporary Restraining Order in the State Court and simultaneously filed a Statement of Claim with the NASD with the consent of the parties. The Court ordered the case to Arbitration and enjoined BAS from filing an amendment to the Claimant's U-5 pending a further order from the Panel of Arbitrators. The Panel held an Injunctive proceeding on March 28, 2003 and ordered that Claimant's U-5 be amended. A hearing was held on the merits during November 3-6, 2003.

The Panel granted, in part, Claimant's Motion for Injunctive Relief by Order dated April 1, 2003.

The Panel granted Claimant's Motion to Amend Panel's Order by Order dated July 8, 2003.

The Panel granted Claimant's Motion to Amend Statement of Claim on October 23, 2003.

The Panel granted Respondents leave to file and accepted the Statement of Answer filed on May 23, 2003.

At the hearing on the merits, the Panel denied Respondents' Motions for Summary Judgment.

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, motions and responses thereto, and hearing oral argument, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are joint and severally liable to and shall pay to Claimant the sum of \$364,869.00 in compensatory damages;
2. The Panel recommends the expungement of the information disclosed via question 7B and the accompanying Internal Review Disclosure Reporting Page on the Full U5 form filing submitted by Banc of America Securities LLC in September 2002. The "yes" answer to 7B should be changed to "no" and the accompanying Internal Review Disclosure Reporting Page deleted in its entirety. In addition, the two amended Form U5 filings submitted by Banc of America Securities LLC (in July 2003 and September 2003) should also be deleted in their entirety as those U5 amendment filings amended the details to the Internal Review disclosure details reported on the original U5 form filing. Although the Panel did not find any of the alleged statements in their entirety made by the Respondents in the Form U-5 to be legally defamatory, the Panel recommends expungement relief based on the defamatory nature of the information in the CRD;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 500.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent BAS is a party.

| | |
|-------------------------|---------------|
| Member surcharge | = \$ 2,800.00 |
| Pre-hearing process fee | = \$ 750.00 |
| Hearing process fee | = \$ 5,000.00 |

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

1. Respondent BAS is assessed:

| | |
|---------------------------------|-------------|
| Additional arbitrator honoraria | = \$ 312.50 |
|---------------------------------|-------------|

2. Claimant is assessed:

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|---------------------------------|---------------|
| Injunctive relief surcharge | = \$ 2,500.00 |
| Additional arbitrator honoraria | = \$ 312.50 |

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

| | |
|--|---------------|
| One (1) Pre-hearing session with Panel @ \$ 1,200.00 | = \$ 1,200.00 |
| Pre-hearing conference: October 23, 2003 1 session | |

| | |
|--|---------------|
| Ten (10) Hearing sessions @ \$ 1,200.00 | = \$12,000.00 |
| Hearing Dates: March 28, 2003 2 sessions | |
| November 3, 2003 2 sessions | |
| November 4, 2003 2 sessions | |
| November 5, 2003 2 sessions | |
| November 6, 2003 2 sessions | |

| | |
|------------------|---------------|
| Total Forum Fees | = \$13,200.00 |
|------------------|---------------|

1. The Panel has assessed \$ 6,600.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 6,600.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimant is assessed and shall pay:

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|-------------------------------------|----------------------|
| Initial Filing Fee | = \$ 500.00 |
| Injunctive Relief Fees | = \$ 2,812.50 |
| <u>Forum Fees</u> | <u>= \$ 6,600.00</u> |
| Total Fees | = \$ 9,912.50 |
| <u>Less payments</u> | <u>= \$ 4,200.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 5,712.50 |

2. Respondent BAS is assessed and shall pay:

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|-------------------------------------|----------------------|
| Member Fees | = \$ 8,550.00 |
| <u>Injunctive Relief Fees</u> | <u>= \$ 312.50</u> |
| Total Fees | = \$ 8,862.50 |
| <u>Less payments</u> | <u>= \$ 8,550.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 312.50 |

3. Respondents are jointly and severally assessed and shall pay:

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|-------------------------------------|----------------------|
| <u>Forum Fees</u> | <u>= \$ 6,600.00</u> |
| Total Fees | = \$ 6,600.00 |
| <u>Less payments</u> | <u>= \$ 0.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 6,600.00 |

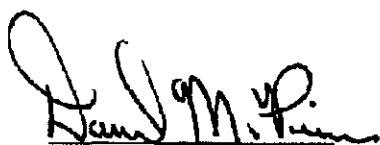
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

| | |
|------------------------------|--|
| David M. Pierce | - Non-Public Arbitrator, Presiding Chairperson |
| William H. Malloy, Jr., Esq. | - Public Arbitrator, Panelist |
| John H. Griffing | - Public Arbitrator, Panelist |

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Concurring Arbitrators' Signatures

David M. Pierce

Non-Public Arbitrator, Presiding Chairperson

12-19-03
Signature DateWilliam H. Malloy, Jr., Esq.
Public Arbitrator, PanelistSignature DateJohn H. Griffing
Public Arbitrator, PanelistSignature DateDecember 19, 2003
Date of Service (For NASD Dispute Resolution office use only)

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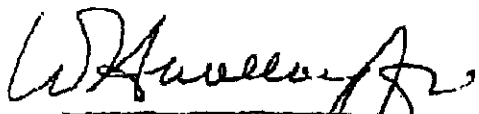
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William H. Malloy, Jr., Esq.
Public Arbitrator, Panelist

December 19, 2003

Signature Date

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Public Arbitrator, Panelist

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Public Arbitrator, Panelist

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Signature Date

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