

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Gwyn E. Staton, Claimant v. Banc of America Investment Services, Inc., Respondent

Case Number: 03-02911

Hearing Site: Seattle, Washington

Nature of the Dispute: Customer v. Member

REPRESENTATION OF PARTIES

For Claimant:

Lawrence R. Cock, Esq.
Cable Langenbach Kinerk &
Bauer, LLP
Seattle, Washington

For Respondent:

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

CASE INFORMATION

Statement of Claim filed: April 12, 2003

Claimant's Uniform Submission Agreement signed: April 10, 2003

Statement of Answer filed by Respondent Banc of America Investment Services, Inc.: September 8, 2003

Respondent Banc of America Investment Services, Inc.'s Uniform Submission Agreement signed: September 8, 2003

CASE SUMMARY

Claimant alleged misrepresentations, omissions, fraud, breach of fiduciary duty, negligence, negligent and intentional misrepresentation, breach of contract, unauthorized trading, violation of Washington State Consumer Protection Act, violation of the Securities Act, violation of the Securities Exchange Act and Rule 10b-5 promulgated thereunder, violation of Title 18, and RICO statute violations. Claimant's allegations involved bond and stock mutual funds.

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

RELIEF REQUESTED

Claimant requested compensatory damages of at least \$50,000.00, unspecified punitive damages, pre- and post-judgment interest and costs, including attorney's fees, treble damages, recovery of commissions, charges, and load fees, and tax preparation and accounting fees.

Respondent requested dismissal of Claimant's Statement of Claim in its entirety, expungement of this matter from Mark Seto's CRD records, forum fees, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

In an August 27, 2003 letter to NASD Dispute Resolution, Claimant stated: "Please remove this matter from small case status as my damages are more. Enclosed is my check for \$175.00 for claims up to \$50,000.00." Accordingly, the relief requested and the corresponding NASD fees are based on damages of up to \$50,000.00. Claimant's claim is deemed amended pursuant to Rule 10328(a).

On September 8, 2003, Respondent submitted a Declaration of Mark Seto in Support of Respondent Banc of America Investment Services, Inc.'s Statement of Answer.

On December 9, 2004, Claimant filed a Motion to Amend Statement of Claim pursuant to NASD Code of Arbitration Procedure Rule 10328(c). On December 10, 2004, Respondent filed a Memorandum in Opposition to Claimant's Motion to Amend Statement of Claim. On December 10, 2004, the arbitrator denied the motion.

On December 13, 2004, Claimant Gwyn E. Staton submitted to the arbitrator Claimant's Memorandum Regarding the WSA Rescission Remedy (the "Memorandum"). After due deliberation, the arbitrator denied the relief requested in the Memorandum.

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 arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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 = \$ 175.00

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, the member firm Banc of America Investment Services, Inc. is a party, and the following fees are assessed:

Member Surcharge = \$ 875.00

Pre-Hearing Process Fee = \$ 750.00

Hearing Process Fee = \$1,000.00

Total Member Fees = **\$2,625.00**

Adjournment Fees

The following adjournment fees are assessed:

September 14-15, 2004, adjournment requested by Claimant = \$ waived

Forum Fees and Assessments

The arbitrator 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 arbitrator. The following fees are assessed:

Three (3) pre-hearing conference sessions with a single arbitrator @ \$450.00/session = \$1,350.00

Pre-hearing conferences: April 14, 2004 1 session
 August 4, 2004 1 session
 December 10, 2004 1 session

Four (4) hearing sessions @ \$450.00/session = \$ 1,800.00

Hearings: December 13, 2004 2 sessions
 December 14, 2004 2 sessions

Total Forum Fees = **\$ 3,150.00**

1. The arbitrator assessed \$1,575.00 of the forum fees to Claimant Gwyn E. Staton.
2. The arbitrator assessed \$1,575.00 of the forum fees to Respondent Banc of America Investment Services, Inc.

Fee Summary

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

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= <u>\$1,575.00</u>
Total Fees	= \$1,750.00
<u>Less payments</u>	= <u>\$ (625.00)</u>
Balance Due NASD Dispute Resolution	= \$1,125.00

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

Member Fees	= \$ 2,625.00
<u>Forum Fees</u>	= <u>\$ 1,575.00</u>
Total Fees	= \$ 4,200.00
<u>Less payments</u>	= <u>\$(1,100.00)</u>
Balance Due NASD Dispute Resolution	= \$ 3,100.00

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.

NASD Dispute Resolution
Arbitration No. 03-02911
Award Page 5 of 5

ARBITRATOR

Arbitrator's Name

Public Arbitrator


Ernest D. Greco, Esq.
Public Arbitrator

12-17-04
Signature Date

12/17/04
Date of Service