

**Stipulated Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Lucy Steinberg, an individual, and Lucy Steinberg as co-trustee of the Leigh and Lucy Steinberg Trust, Claimants v. Banc of America Investment Services, Inc. and John Vilardo, Respondents

Case Number: 03-03200

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

For Claimants:

John C. O'Malley, Esq.  
Virginia L. Miller, Esq.  
Call, Jensen & Ferrell, P.C.  
Newport Beach, California

For Respondents:

Benjamin P. Smith, Esq.  
Morgan, Lewis & Bockius LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: April 29, 2003

Claimants' Uniform Submission Agreement signed: April 28, 2003

Joint Statement of Answer filed by Respondents: July 10, 2003

Respondent Banc of America Investment Services, Inc.'s Uniform Submission Agreement signed: July 10, 2003

Respondent John Vilardo's Uniform Submission Agreement signed: July 1, 2003

**CASE SUMMARY**

Claimants alleged breach of fiduciary duty, breach of loyalty, negligence, constructive fraud, aiding and abetting breach of fiduciary duty, negligent supervision, conversion, and violations of federal and state securities laws and NASD rules involving transactions in unspecified securities.

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

### **RELIEF REQUESTED**

Claimants requested between \$3,000,000.00 and \$5,000,000.00 in compensatory damages, \$10,000,000.00 in punitive damages, interest in excess of \$100,000.00, a return of all commissions paid, and costs, including attorney's fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and a recommendation that all references to this matter in the regulatory records of Respondents be expunged.

### **OTHER ISSUES CONSIDERED AND DECIDED**

On July 10, 2003, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On August 27, 2003, Claimants and Claimants' 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.

On August 29, 2005, NASD Dispute Resolution received written notice of settlement and the parties' agreement to submit a stipulated award.

### **STIPULATION**

Claimants Lucy Steinberg, individually and as co-trustee of the Leigh and Lucy Steinberg Trust, brought certain claims in the above-captioned arbitration against Respondents Banc of America Investment Services, Inc. and John Vilardo concerning certain investments Claimants purchased through Respondents. Respondents have denied and continue to deny all material allegations of Claimants' claims.

Claimants and Respondents entered into a Confidential Settlement Agreement and Release (the "Settlement Agreement") regarding Claimants' claims in the arbitration. Claimants agree to dismiss all of their claims in the arbitration proceeding with prejudice. Respondent John Vilardo did not and will not make any monetary contribution to the settlement. Respondents request that Claimants' claims be expunged from Respondent John Vilardo's Form U4, Form U5 and any other NASD reporting document, and Claimants have not agreed not to oppose Respondents' request.

Pursuant to the Settlement Agreement: 1.) The parties jointly request that the Panel issue an Award dismissing the above-captioned arbitration with prejudice; and 2.) Respondents request that the Panel issue an Award recommending that all references to Claimants' claim and to the above-captioned arbitration be expunged from Respondent John Vilardo's registration of records maintained by NASD Central Registration Depository, with the understanding that pursuant to NASD Notice to Members 99-09, Respondents must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. Claimants have agreed not to oppose Respondents' expungement request.

The parties agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered.

### **AWARD**

After considering the parties' request for this Stipulated Award, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants and Respondents have entered into a Confidential Settlement Agreement and Release.
2. Claimants' claims are dismissed with prejudice.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent John Vilardo's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent John Vilardo must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. The parties shall bear their respective costs, including attorney's fees.
5. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the *NASD Code of Arbitration Procedure* (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 = \$ 600.00

### **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	= \$ 3,750.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$ 5,500.00
<b>Total Member Fees</b>	<b>= \$ 10,000.00</b>

### **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:

One (1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00  
Pre-hearing conferences: October 12, 2004 1 session

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**Total Forum Fees** = \$ 1,200.00

1. The Panel assessed \$600.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents.

### **Fee Summary**

1. Claimants, Lucy Steinberg, an individual, and Lucy Steinberg as co-trustee of the Leigh and Lucy Steinberg Trust, are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 1,200.00
<u>Less payments</u>	= \$ (1,800.00)
<b>Refund paid to Claimants</b>	<b>= \$ (600.00)</b>

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

Member Fees	= \$ 10,000.00
<u>Less payments</u>	= \$ (10,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

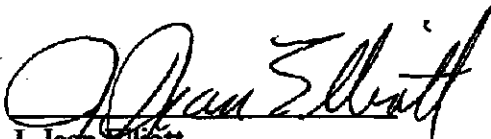
Forum Fees	= \$ 600.00
<u>Less Payments by Banc of America Investment Services, Inc.</u>	<u>= \$ (600.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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**

<b>J. Jean Elliott</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>James P. Murphy</b>	-	<b>Public Arbitrator</b>
<b>Karen L. Gold</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**



J. Jean Elliott  
Chair, Public Arbitrator

10-12-2005  
Signature Date

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James P. Murphy  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Karen L. Gold  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

10/21/05  
Date of Service

**ARBITRATION PANEL**

<b>J. Jean Elliott</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>James P. Murphy</b>	-	<b>Public Arbitrator</b>
<b>Karen L. Gold</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

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J. Jean Elliott  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

  
James P. Murphy  
Public Arbitrator

9.21.05  
Signature Date

\_\_\_\_\_  
Karen L. Gold  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

10/21/05  
Date of Service

**ARBITRATION PANEL**

<b>J. Jean Elliott</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>James P. Murphy</b>	-	<b>Public Arbitrator</b>
<b>Karen L. Gold</b>	-	<b>Non-Public Arbitrator</b>

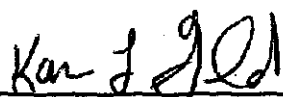
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\_\_\_\_\_  
**J. Jean Elliott**  
**Chair, Public Arbitrator**

\_\_\_\_\_  
**Signature Date**

\_\_\_\_\_  
**James P. Murphy**  
**Public Arbitrator**

\_\_\_\_\_  
**Signature Date**

  
\_\_\_\_\_  
**Karen L. Gold**  
**Non-Public Arbitrator**

10-17-05  
**Signature Date**

10/21/05  
**Date of Service**