
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Donald C. Carter

Case Number: 03-05054

Name of the Respondent

Bank of America a/k/a Bank of America Securities, L.L.C.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Donald C. Carter, hereinafter referred to as "Claimant": David J. Feingold, Esq., Feingold & Kam, L.L.C., Palm Beach Gardens, Florida.

For Bank of America a/k/a Bank of America Securities, LLC ("BOA"), hereinafter referred to as "Respondent": Richard M. Zabak, Esq., Gray Harris & Robinson, P.A., Tampa, Florida.

CASE INFORMATION

Statement of Claim filed on or about: July 10, 2003.

Claimant signed the Uniform Submission Agreement: June 25, 2003.

Answer, Defenses and Motion to Dismiss filed by Respondent on or about: September 19, 2003.

Respondent did not file an executed Uniform Submission Agreement.

Claimant's Response to Respondent's Motion to Dismiss filed on or about: October 9, 2003.

Respondent's Reply to Claimant's Response to Motion to Dismiss filed on or about: November 3, 2003.

Claimant's Notice of Filing Documents in Opposition to Respondent's Motion to Dismiss and Claimant's Request for Hearing filed on or about: November 6, 2003.

Respondent's Reply to Claimant's Notice of Filing Documents filed on or about: November 7, 2003.

Respondent's Emergency Motion for Dismissal or, Alternatively, Sanctions for Claimant's Non-Compliance with Chairperson's Discovery Order filed on or about: December 28, 2004.

Supplement to Respondent's Emergency Motion for Dismissal or, Alternatively, Sanctions for Claimant's Non-Compliance with Chairperson's Discovery Order filed on or about: January 3, 2005.

Claimant's Response to Respondent's Emergency Motion for Dismissal or, Alternatively, Sanctions for Claimant's Non-Compliance with Chairperson's Discovery Order filed on or about: January 3, 2005.

Respondent's Reply in Further Support of Its Emergency Motion for Dismissal or, Alternatively, Sanctions for Claimant's Non-Compliance with Chairperson's Discovery Order filed on or

about: January 5, 2005.

Claimant's Response to Respondent's Reply in Further Support of Its Emergency Motion for Dismissal or, Alternatively, Sanctions for Claimant's Non-Compliance with Chairperson's Discovery Order filed on or about: January 6, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; aiding and abetting breach of fiduciary duty; negligence; violation of Section 517 of the Florida Statutes; violation of New York consumer protection law; common law fraud; fraudulent inducement; churning; and, violation of Section 10(b) of the Securities and Exchange Act. The causes of action relate to, among other things, the purchase and sale in Claimant's account of shares of the common stock, Redback Networks, as well as other unspecified securities.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimant requested rescission of the transactions in question and/or an award of compensatory damages in an amount between \$2,000,000.00 and \$6,000,000.00, plus an award equal to three times the compensatory damages; unspecified punitive damages; attorneys' fees; costs; interest; plus any other relief, including equitable relief, this Panel deemed just and proper.

Respondent requested dismissal of Claimant's claims, after which, in accordance with Florida law, Respondent will proceed to a court of competent jurisdiction to obtain a judgment against Claimant for attorneys' fees and costs.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On March 15, 2004, oral argument was heard on Respondent's Motion to Dismiss. Pursuant to the parties' agreement and the Panel's approval, two of the Arbitrators were excused from the call and the Chairperson remained to hear oral argument. After careful consideration, and a review of the documents and case law, the Chairperson issued an order on March 16, 2004, which denied, without prejudice, Respondent's Motion to Dismiss.

On January 12, 2005, oral argument was heard on Respondent's Emergency Motion to Dismiss or Alternatively, Sanctions for Claimant's Non-Compliance with Chairperson's Discovery Order. On or about January 12, 2005, the Panel issued an order, which denied Respondent's Motion to Dismiss and reserved ruling on Respondent's Motion for Sanctions. After considering all of the evidence and testimony, the Panel denied Respondent's Motion for Sanctions.

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 and the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable for common law negligence, churning and violation of Section 517 of the Florida Statutes. Respondent shall pay to Claimant compensatory damages in the amount of \$352,995.71 plus interest at a rate of 2.5% accruing from August 15, 2001 until the date of payment of the Award.

Claimant's request for attorneys' fees is granted, with the amount to be determined by a court of competent jurisdiction, pursuant to Chapter 517 of the Florida Statutes.

Respondent is liable and shall pay to Claimant the sum of \$600.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all relief not specifically addressed herein, including Claimant's request for punitive damages and Claimant's claims for relief under the New York consumer protection law, are denied.

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	= \$ 600.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. Accordingly, BOA is a member firm and a party.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,500.00</u>
Total Member Fees	= \$10,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

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.

No injunctive relief fees were incurred in this matter.

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 a single arbitrator @ \$450.00/session	= \$	450.00
Pre-hearing conference: March 15, 2004 1 session		
Two (2) Pre-hearing sessions with Panel @ \$1,200.00/session	= \$	2,400.00
Pre-hearing conferences: February 27, 2004 1 session		
January 12, 2005 1 session		
Six (6) Hearing sessions @ \$1,200.00/session	= \$	7,200.00
Hearing Dates: January 18, 2005 2 sessions		
January 19, 2005 2 sessions		
January 20, 2005 2 sessions		
Total Forum Fees	=	\$10,050.00

The Panel has assessed forum fees of \$5,025.00 to Claimant.

The Panel has assessed forum fees of \$5,025.00 to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$	600.00
Forum Fees	=	\$5,025.00
Total Fees	=	\$5,625.00
Less payments	=	\$1,800.00
Balance Due NASD Dispute Resolution	=	\$3,825.00

Respondent is solely liable for:

Member Fees	= \$10,000.00
Forum Fees	= \$ 5,025.00
Total Fees	= \$15,025.00
<u>Less payments</u>	<u>= \$11,750.00</u>
Balance Due NASD Dispute Resolution	= \$ 3,275.00

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

ARBITRATION PANEL

Kevin S. Doty, Esq.	-	Public Arbitrator, Presiding Chairperson
Todd M. Saunders, Esq.	-	Public Arbitrator
Joel H. Holzer	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Kevin S. Doty, Esq.
Public Arbitrator, Presiding Chairperson

January 27, 2005
Signature Date

/s/
Todd M. Saunders, Esq.
Public Arbitrator

January 16, 2005
Signature Date

/s/
Joel H. Holzer
Non-Public Arbitrator

January 26, 2005
Signature Date

January 27, 2005
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
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Respondent is solely liable for:

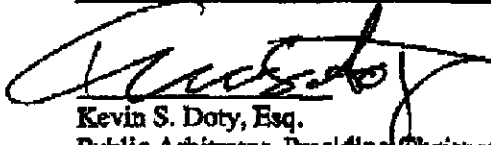
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 Public Arbitrator, Presiding Chairperson


 Signature Date

Todd M. Saunders, Esq.
 Public Arbitrator

Signature Date

Joel H. Holzer
 Non-Public Arbitrator

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Kevin S. Doty, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date



Todd M. Saunders, Esq.
Public Arbitrator

1/26/05

Signature Date

Joel H. Holzer
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution
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Signature Date

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Public Arbitrator

Signature Date



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