

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Olga Shipilova IRRE Trust, Vadim M. Tysin, Trustee

Case Number: 03-05108

Name of the Respondents  
Banc One Securities Corp.

Hearing Site: Chicago, Illinois

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**NATURE OF THE DISPUTE**

Customer v. Member Firm

**REPRESENTATION OF PARTIES**

James J. Moylan, Esq., of James J. Moylan and Associates, PC located in Steamboat Springs, Colorado represented Claimants Olga Shipilova IRRE Trust, Vadim M. Tsysin, Trustee, hereinafter referred to as "Claimant" or "Shipilova Trust."

Gregory D. Isbell, Esq., in-house counsel for Banc One Securities located in Chicago, Illinois represented Respondents Banc One Securities Corp., hereinafter referred to as "Respondent" or "Banc One."

**CASE INFORMATION**

Claimant filed the Statement of Claim on or about July 14, 2003. Claimant signed the Uniform Submission Agreement on May 5, 2003.

Respondent filed a Statement of Answer and Motion to Dismiss on October 22, 2003. Respondent Banc One signed the Uniform Submission Agreement August 13, 2003.

Claimant filed a Response to the Motion to Dismiss on November 11, 2003. Respondent filed a Reply in Support of its Motion to Dismiss on January 21, 2004. Claimant filed a Sur-Reply on January 28, 2004.

**CASE SUMMARY**

Claimant Shipilova Trust asserted the following causes of action: violation of Section 10(b) of the Securities Exchange Act of 1934 and SEC Rule 10b-5 promulgated thereunder; violation of NASD-R Conduct Rules 2110 and 2310-2(d); violation of Texas Securities Law; breach of contract under the Shingle Theory; negligence; breach of fiduciary duty; control person liability; *respondeat superior*.

The causes of action relate to One Group Government Bond Fund Class A Shares Mutual Fund.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: did not agree to submit claims beyond the scope of Rule 10301 to arbitration; claims are not ripe; no private right of action by a customer for violation of NASD rules; New York law applies; applicable statutes of limitation and repose make the claim untimely; failure to state a claim upon which relief can be granted; failure to adequately allege a shingle theory claim; Respondent acted in good faith and exercised at least that care, diligence and skill which ordinarily prudent persons would exercise in similar circumstances and like positions; Trustee ratified and chose to retain each investment made in the account; assumption of risk and/or negligent conduct, acts and/or omissions on the part of the Trustee; Claimant cannot establish reliance upon any actionable misrepresentation alleged.

### **RELIEF REQUESTED**

Claimant Shipilova Trust requested compensatory damages in the amount of \$317,396.69, interest, attorney's fees, costs, and any such relief the Panel deems just and equitable.

Respondents requested denial and dismissal of claims.

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

In an Order dated May 24, 2005, the Panel denied Respondent's Motion to Dismiss without prejudice to renew at a later date.

### **AWARD**

After considering the pleadings, 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:

1. Any and all claims asserted by the Olga Shipilova IRRE Trust against Banc One Securities Corp., are denied in their entirety.
2. Except for the forum fees associated with this matter, which are specified herein, the parties shall bear their own costs, including attorney's fees.
3. Any and all relief not specifically addressed herein, including punitive damages, is 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	= \$ 300.00
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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, Banc One, as a party, is assessed the following fees:

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

#### **Adjournments**

Parties jointly requested adjournment of the hearings scheduled for September 14, 15, 28, 29, 2004. Pursuant to Rule 10403 of the Code the \$1,125.00 adjournment fee is waived.

#### **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 sessions with Panel at \$1,125.00	= \$ 1,125.00
Pre-hearing conferences: May 21, 2004	1 session
Two (2) Hearing Sessions at \$1,125.00	= \$ 2,250.00
Hearing Dates: February 15, 2005	2 sessions
Total Forum Fees	= \$ 3,375.00

The Panel has assessed \$1,687.50 of the forum fees to Claimant. The Panel has assessed \$1,687.50 of the forum fees to Banc One Securities Corp.

**FEE SUMMARY**

Claimant Olga Shipilova IRRE Trust is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 1,987.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 562.50

Respondent Banc One Securities, Corp., is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,687.50
Total Fees	= \$ 6,887.50
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 1,687.50

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

**ARBITRATION PANEL**

David O. Juveland, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
William H. Tobin, Esq.	-	Public Arbitrator
Jeffrey W. Finke, Esq.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
David O. Juveland, Esq.  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
William H. Tobin, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Jeffrey W. Finke, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

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David O. Juveland, Esq.  
Non-Public Arbitrator, Presiding Chairperson

Signature Date

  
William H. Tobin, Esq.  
Public Arbitrator

3-7-05  
Signature Date

Jeffrey W. Finke, Esq.  
Public Arbitrator

Signature Date

2-15-05 ing / 5-21-04 probing  
Date of Service (For NASD Dispute Resolution office use only)

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Signature Date

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William H. Tobin, Esq.  
Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Jeffrey W. Finks, Esq.  
Public Arbitrator

March 7, 2005  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)