

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Christine M. Power, Trustee for the  
Christine M. Power Trust

Case Number: 03-05399

Name of the Respondents

Laura J. Miller, Maurice E. Quiroga,  
Banc of America Investment Services, Inc. and  
Carrie E. Genovese

Hearing Site: St. Louis, Missouri

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**NATURE OF DISPUTE**

Customer vs. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Claimant, Christine M. Powers, ("Powers") appeared *pro se* in this matter.

Scott T. Beall, Esq. of the law firm, Tate, Lazarini & Beall, PLC, located in Memphis, Tennessee represented the Respondents, Laura J. Miller ("Miller"), Maurice E. Quiroga ("Quiroga"), Banc of America Investment Services, Inc. ("Banc of America") and Carrie E. Genovese ("Genovese"), hereinafter collectively referred to as "Respondents."

**CASE INFORMATION**

Statement of Claim filed on or about July 17, 2003. Claimant signed the Uniform Submission Agreement on June 30, 2003.

Statement of Answer and Motion to Dismiss filed by Respondents Miller, Banc of America and Quiroga on or about September 16, 2003. Claimant filed a response to Respondents' Motion on October 26, 2003. Respondent Banc of America signed the Uniform Submission Agreement on September 18, 2003. Respondents Miller and Quiroga did not submit a Uniform Submission Agreement.

Claimant filed a Motion to Amend and Amended Statement of Claim on October 26, 2003 naming Carrie Genovese as a Respondent. Respondents Miller, Banc of America, Quiroga and Genovese filed a joint Answer to the Amended Statement of Claim and a Motion to Dismiss Carrie Genovese on December 2, 2003. Claimant filed a Response to Respondent's Motion to Dismiss on January 8, 2004.

At the hearing on July 21, 2004, Claimant submitted a second Motion to Amend Statement of Claim to increase the amount of her damages. Respondent objected to Claimant's amendment at the hearing.

On October 18, 2004, Claimant filed a third Motion to Amend Statement of Claim to increase damages up to \$149,444.60 and requested that she be allowed to name Carrie E. Genovese ("Genovese") and Keith Uebelein ("Uebelein") as Respondents in this proceeding. Respondents filed an Opposition to Claimant's Motions on October 27, 2004 and Claimant filed a Reply on October 28, 2004.

#### **CASE SUMMARY**

Claimant asserted the following causes of action: negligence, failure to supervise, breach of fiduciary duty, misrepresentations, unauthorized trading, churning, omission of facts, manipulations and suitability. The causes of action relate to unspecified securities held at Banc of America. Claimant asserted that Respondents made sales in her Banc of America account, which were unsuitable and not authorized by Claimant.

Unless specifically admitted in its Answers, Respondents Miller, Quiroga, Banc of America and Genovese denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The claims are barred by the doctrines of ratification, waiver, estoppel contributory/comparative negligence and assumption of the risk.
2. The claims are barred by virtue of Claimant's obligations to raise timely and bona fide concerns, which was not done here.
3. Claimant cannot establish "scienter", which is a requirement of a fraud or unauthorized trading claim.
4. Any injury or loss or damage was the result of superseding or intervening causes beyond the control of Respondents.
5. The claims are barred by a failure to mitigate damages.
6. The Statement of Claim fails to state a claim upon which relief can be granted.

#### **RELIEF REQUESTED**

Claimant requested \$69,646.61 in compensatory damages; \$30,000.00 in punitive damages; unspecified interest; and costs in the amount of \$7,735.75.

Respondents, Miller, Quiroga, Banc of America and Genovese requested that Claimant's Statement of Claim be dismissed in its entirety, that Respondent Genovese be dismissed from these proceedings, and that costs and attorney's fees be assessed against Claimant.

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

Respondents Laura J. Miller and Maurice E. Quiroga did not file with NASD Dispute Resolution, a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and are bound by the determination of the Panel on all issues submitted.

In an Order dated March 18, 2004, pursuant to Respondents' motion to dismiss Carrie E. Genovese and a motion to dismiss made orally by Respondent Maurice E. Quiroga during a pre-hearing conference on March 18, 2004, the Panel affirmatively found that Respondents Quiroga and Genovese were not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds. Therefore, the Panel granted the motions and dismissed Respondents Genovese and Quiroga from these proceedings. They further ordered that all reference of this complaint be removed from the Central Registration Depository ("CRD") records of Respondents Quiroga and Genovese.

At the hearing on July 21, 2004, the Panel granted Claimant's Motion to Amend Statement of Claim for increased damages. Claimant's compensatory damages were increased to \$76,646.00; punitive damages were increased to \$65,000.00; and costs amended to \$4,490.39.

At the hearing on November 2, 2004, pursuant to Claimant's Motions to Amend Statement of Claim for increased damages and to name Genovese and Uebelein as Respondents in this matter, the Panel denied Claimant's motions. At close of Claimant's case, Respondents made an oral motion to dismiss the remaining Respondents, Laura J. Miller and Banc of America Investment Securities, Inc. The Panel denied Respondents' motion.

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

1. Any and all claims asserted by Claimant, Christine M. Powers, Trustee for the Christine Powers Trust Agreement, are denied.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Maurice E. Quiroga and Carrie E. Genovese's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondents Quiroga and Genovese must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive. The Panel affirmatively found that Respondents Quiroga and Genovese were not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation or conversion of funds.
3. Parties shall bear their own costs, including attorneys' fees, except as specified herein.
4. 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

#### **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 persons at the time of the events giving rise to the dispute. Accordingly, Banc of America is a party to these proceedings and is assessed the following:

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

Total fees = \$ 5,200.00

#### **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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00 = \$ 900.00

Pre-hearing conferences: April 14, 2004 1, 2004 1 session  
July 1, 2004 1 session

Three (3) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 3,375.00

Pre-hearing conferences: February 4, 2004 1 session  
March 18, 2004 1 session  
August 5, 2004 1 session

Six (6) Hearing sessions @ \$1,125.00 = \$ 6,750.00

Hearing Dates: July 21, 2004 2 sessions  
July 22, 2004 2 sessions  
November 2, 2004 2 sessions

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Total Forum Fees = \$11,025.00

1. The Panel assessed 50% of the total forum fees in the amount of \$5,512.50 solely to Claimant, Christine M. Powers.
2. The Panel assessed 50% of the total forum fees in the amount of \$5,512.50 solely to Respondent Banc of America Securities, Inc.

**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.

1. Respondents Miller and Banc of America requested audio tapes = \$ 15.00

**EEF SUMMARY**

1. Claimant, Christine Powers, is solely liable for:

|                                     |                      |
|-------------------------------------|----------------------|
| Initial Filing Fee                  | = \$ 300.00          |
| <u>Forum Fees</u>                   | <u>= \$ 5,512.50</u> |
| Total Fees                          | = \$ 5,812.50        |
| <u>Less payments</u>                | <u>= \$ 975.00</u>   |
| Balance Due NASD Dispute Resolution | = \$ 4,837.50        |

2. Respondent Banc of America Securities, Inc. is solely liable for:

|                                     |                      |
|-------------------------------------|----------------------|
| Member Fees                         | = \$ 5,200.00        |
| Forum Fees                          | = \$ 5,512.50        |
| <u>Administrative Costs</u>         | <u>= \$ 15.00</u>    |
| Total Fees                          | = \$10,727.50        |
| <u>Less payments</u>                | <u>= \$ 3,565.00</u> |
| Balance Due NASD Dispute Resolution | = \$ 7,162.50        |

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

**ARBITRATION PANEL**

|                                    |   |  |
|------------------------------------|---|--|
| Richard K. Zerr, Esq.              | - | Public Arbitrator, Presiding Chairperson |
| Frederick Michael Switzer, III, JD | - | Public Arbitrator                        |
| Bryan A. McDonald                  | - | Non-Public Arbitrator                    |

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Richard K. Zerr, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
11/19/04  
Signature Date

\_\_\_\_\_  
Frederick Michael Switzer, III, JD  
Public Arbitrator

\_\_\_\_\_  
11/20/04  
Signature Date

\_\_\_\_\_  
Bryan A. McDonald  
Non-Public Arbitrator

\_\_\_\_\_  
11/19/04  
Signature Date

\_\_\_\_\_  
11/23/04  
Date of Service (For NASD Dispute Resolution office use only)

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ARBITRATION PANEL

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Public Arbitrator

Signature Date

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Non-Public Arbitrator

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 Signature Date

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 Non-Public Arbitrator

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Public Arbitrator

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Signature Date

*Bryan A. McDonald*  
\_\_\_\_\_  
Bryan A. McDonald  
Non-Public Arbitrator

*11/19/04*  
\_\_\_\_\_  
Signature Date

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