

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Suzette R. Whitemaine, Claimant v. Lisa K. Dry (f/k/a Lisa K. Dry Aniskovich), Banc of America Investment Services, Inc., and Bank of America, N.A., Respondents

Case Number: 04-00091

Hearing Site: Reno, Nevada

Nature of the Dispute: Associated Person v. Associated Person, Member, and Non-Member

REPRESENTATION OF PARTIES

For Claimant:

Kevin J. Mirch, Esq.
Mirch & Mirch
Reno, Nevada

For Respondents:

Elissa F. Cadish, Esq.
Hale Lane Peek Dennison
and Howard
Reno, Nevada

CASE INFORMATION

Statement of Claim filed: January 6, 2004

Claimant's Uniform Submission Agreement signed: December 12, 2003

Joint Statement of Answer filed by Respondents Lisa K. Dry f/k/a Lisa K. Dry Aniskovich (hereinafter "Lisa K. Dry"), Banc of America Investment Services, Inc., and Bank of America, N.A.: March 5, 2004

Respondent Lisa K. Dry's Uniform Submission Agreement signed: March 5, 2004

Joint Uniform Submission Agreement signed by Respondents Banc of America Investment Services, Inc. and Bank of America, N.A.: March 5, 2004

CASE SUMMARY

Claimant alleged breach of contract, negligence, intentional interference with present contractual relationships, intentional interference with prospective business relationships, defamation, wrongful termination, whistle blower claim, and conspiracy. Claimant's allegations concern the written disclosure of information to a customer without the authorization of a firm principal.

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

RELIEF REQUESTED

Claimant requested an amount in excess of \$10,000.00 in compensatory damages, lost earnings, an amount in excess of \$10,000.00 for physical and mental pain as well as for damage done to Claimant's personal property, an amount in excess of \$10,000.00 in punitive damages, and costs, including attorney's fees.

Respondents requested dismissal of Claimant's Statement of Claim in its entirety, expungement of this matter from Lisa K. Dry's CRD records, reimbursement of forum fees, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On June 29, 2004, Respondents filed a Motion to Disqualify the Law Firm of Mirch & Mirch. On July 2, 2004, Claimant's counsel filed an Opposition to Motion to Disqualify the Law Firm of Mirch and Mirch. On July 6, 2004, the Panel denied the motion.

On June 10, 2004, Respondents filed a Motion for Summary Judgment. On June 17, 2004, Claimant filed an Opposition to Respondents' Motion for Summary Judgment. On June 18, 2004, the Panel denied Respondents' Motion for Summary Judgment.

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

- 1) The Panel finds for the Respondents on all claims: breach of contract, negligence, intentional interference with contractual relationships, wrongful termination, whistle blower (tortious discharge), conspiracy, and defamation. The Panel finds that the statement that was placed on Claimant's U-5 was false and defamatory but that Banc of America Investment Services, Inc. had a conditional privilege under Nevada law.
- 2) The Panel recommends that the reason for termination (i.e., "other") and accompanying termination comment (i.e., "did not adhere to policy regarding written communications with customers") be expunged from Claimant's Form U-5 filed with CRD by Banc of America Investment Services, Inc. The reason for termination should appear as "voluntary." Replacement language for the termination comment is not required as a "voluntary"

termination does not require a termination comment on Form U-5. The Panel's recommendation is based on the defamatory nature of the information and on the fact that the statement does not involve any information relating to customer disputes. The Panel further recommends the expungement of all reference to the above-captioned arbitration from Claimant Suzette R. Whitemaine's (a/ka/ Suzette Rose) registration records that are maintained by NASD's Central Registration Depository ("CRD").

- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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 | = \$ 150.00 |
|--------------------------|-------------|

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 | = \$ 600.00 |
| Pre-Hearing Process Fee | = \$ 750.00 |
| Hearing Process Fee | = \$1,000.00 |
| Total Member Fees | = \$ 2,350.00 |

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:

Five (5) pre-hearing conference sessions with a single arbitrator @ \$ 450.00/session = \$ 2,250.00

| | | |
|--------------------------|---------------|-----------|
| Pre-hearing conferences: | May 17, 2004 | 1 session |
| | June 3, 2004 | 1 session |
| | June 7, 2004 | 1 session |
| | June 10, 2004 | 1 session |
| | June 18, 2004 | 1 session |

Three (3) pre-hearing conference sessions with the Panel @ \$600.00/session = \$1,800.00

Pre-hearing conferences: April 30, 2004 1 session
 May 5, 2004 1 session
 June 21, 2004 1 session

Twelve (12) hearing sessions @ \$600.00/session = \$ 7,200.00

Hearings: July 6, 2004 2 sessions
 July 7, 2004 2 sessions
 July 8, 2004 2 sessions
 July 9, 2004 2 sessions
 October 28, 2004 2 sessions
 October 29, 2004 2 sessions

Total Forum Fees = **\$11,250.00**

The Panel assessed \$11,250.00 of the forum fees to Banc of America Investment Services, Inc.

Fee Summary

1. Claimant Suzette R. Whitemaine is charged with the following fees and costs:

| | |
|--------------------------------------------------|-----------------------|
| <u>Initial Filing Fee</u> | = \$ 150.00 |
| <u>Total Fees</u> | = \$ 150.00 |
| <u>Less payments</u> | = \$(2,475.00) |
| Refund Due Claimant Suzette R. Whitemaine | = \$(2,325.00) |

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

| | |
|--------------------------------------------|----------------------|
| <u>Member Fees</u> | = \$ 2,350.00 |
| <u>Forum Fees</u> | = \$11,250.00 |
| <u>Total Fees</u> | = \$13,600.00 |
| <u>Less payments</u> | = \$(2,350.00) |
| Balance Due NASD Dispute Resolution | = \$11,250.00 |

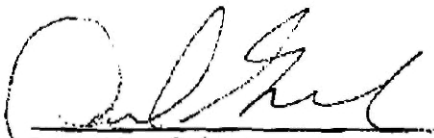
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

NASD Dispute Resolution
Arbitration No. 04-00091
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ARBITRATION PANEL

| | | |
|-----------------------------------|---|-------------------------------------------|
| <i>David M. Gaba, Esq.</i> | - | <i>Public Arbitrator, Presiding Chair</i> |
| <i>Michael R.E. Sanders, Esq.</i> | - | <i>Public Arbitrator</i> |
| <i>Gregory Jay Gurse</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signatures



David M. Gaba, Esq.
Chair, Public Arbitrator

11-3-04
Signature Date

Michael R.E. Sanders, Esq.
Public Arbitrator

Signature Date

Gregory Jay Gurse
Non-Public Arbitrator

Signature Date

11/4/04
Date of Service

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Chair, Public Arbitrator

Signature Date

Michael R.E. Sanders, Esq.
Public Arbitrator

Signature Date



Gregory Jay Gursy
Non-Public Arbitrator

11/03/04

Signature Date

11/4/04

Date of Service