

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Kim Eckis Andre

Case Number: 04-01055

Name of the Respondents
Banc of America Investment Services, Inc. and
Michael Dennis Degolier

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Customer v. Member Firm and Associated Person

REPRESENTATION OF PARTIES

Claimant Kim Eckis Andre, hereinafter referred to as "Claimant": Richard H. Elliot, Esq., of the Law Offices of Richard H. Elliot, located in Dallas, Texas.

Respondents Banc of America Investment Services, Inc. ("Banc of America") and Michael Dennis Degolier ("Degolier"), hereinafter collectively referred to as "Respondents": Jim Parker, Esq. of the firm of Kuperman, Orr, Rial & Albers, located in Austin, Texas.

CASE INFORMATION

Statement of Claim filed: February 18, 2004.

Claimant signed the Uniform Submission Agreement: February 12, 2004.

Statement of Answer filed by Respondents on: May 19, 2004.

Both Respondents signed the Uniform Submission Agreement: May 10, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duty; breach of contract; common law fraud and misrepresentation; violation of the Texas Securities Act; liability under the Texas Business and Commerce Code; negligent misrepresentation; negligence; unsuitability; failure to supervise; violation of the Texas Deceptive Trade Practices Act; and control person liability under the Texas Securities Act. The causes of action related to Claimant's investment in a variable annuity and several aggressive growth mutual funds.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. The claims are barred by the applicable statute of limitations;
2. The Claimant has failed to mitigate her damages;
3. There is a lack of causation because the Claimant's damages, if any, were the result of conscious decisions made by her, not the conduct of anyone else;
4. The Claimant has ratified the transactions in the account by accepting their benefit and not complaining until after the market went against her.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 77,000.00
Punitive Damages	To be determined by the Arbitrators
Interest	Pre-and post-award
Attorneys' Fees	Reasonable fees
Other Costs	Unspecified
Other Monetary/Non-Monetary Relief if any:	As the panel deemed just and proper.

Respondents requested that the Claimant take nothing, that they recover their costs, and for all additional or alternative relief to which it may be entitled.

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. Respondent Banc of America Investment Services, Inc. is liable for and shall pay to the Claimant, Kim Eckis Andre, the sum of \$27, 284.00 as compensatory damages;
2. The claims against Michael Dennis Degolier are dismissed and denied in their entirety;
3. The parties shall bear their own costs of arbitration, including any attorneys' fees, except for those sums specifically enumerated herein; and,
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 = \$ 225.00

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 person at the time of the events giving rise to the dispute. Accordingly, Banc of America Investment Services, Inc. is party and the following member fees are assessed:

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$750.00	= \$ 750.00
Pre-hearing conferences: August 16, 2004 1 session	
Five (5) Hearing sessions @ \$750.00	= \$ 3,750.00
Hearing Dates: February 8, 2005 2 sessions	
February 9, 2005 2 sessions	
February 10, 2005 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 4,500.00

The Panel has assessed \$1,500.00 of the forum fees to Claimant Kim Eckis Andre and \$3,000.00 of the forum fees to Respondent Banc of America Investment Services, Inc.

FEE SUMMARY

Claimant Kim Eckis Andre is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 1,500.00
Total Fees	= \$ 1,725.00
Less payments	= \$ 975.00
Balance Due NASD Dispute Resolution	= \$ 750.00

Respondent Banc of America Investment Services, Inc. is solely liable for:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 3,000.00
Total Fees	= \$ 6,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00


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

ARBITRATION PANEL

George Andrew Platt, J.D. - Public Arbitrator, Presiding Chairperson
Dolores R. Rogers - Public Arbitrator
Simeon R. Trotter - Non-Public Arbitrator

Concurring Arbitrators' Signatures


George Andrew Platt, J.D.
Public Arbitrator, Presiding Chairperson

MARCH 14, 2005
Signature Date

Dolores R. Rogers
Public Arbitrator

Signature Date

Simeon R. Trotter
Non-Public Arbitrator

Signature Date

3/14/05 [Signature]
Date of Service (For NASD Dispute Resolution office use only)

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Signature Date

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Public Arbitrator

3/14/05
Signature Date

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Non-Public Arbitrator

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Signature Date

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Public Arbitrator

Signature Date



Simeon R. Trotter
Non-Public Arbitrator

14 MARCH 2005

Signature Date

3/14/05 Man

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