

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Banc of America Investment Services, Inc.

and

04-01127

Oklahoma City, Oklahoma

Respondent

James Billingsley

Counter-Claimant

James Billingsley

and

Counter-Respondent

Banc of America Investment Services, Inc.

NATURE OF THE DISPUTE

Member Firm vs. Associated Person, Associated Person vs. Member Firm

REPRESENTATION OF PARTIES

Banc of America Investment Services, Inc. ("**Claimant**", "**Counter-Respondent**" or "**Banc of America**") was represented by Diane C. Fischer, Esq., of Kane & Fisher, Ltd, Chicago, Illinois.

James Billingsley ("**Respondent**", "**Counter-Claimant**" or "**Billingsley**") was represented by John E. Barbush, Esq., of the Law Offices of John E. Barbush, P.C., Oklahoma City, Oklahoma.

CASE INFORMATION

The Statement of Claim was filed on or about February 20, 2004. The Submission Agreement of Claimant, Banc of America Investment Services, Inc., was signed on or about February 18, 2004. Claimant's Reply to the Answer and Counterclaim was filed on or about April 30, 2004.

The Statement of Answer and Counterclaim was filed by Respondent, James Billingsley, on or about April 27, 2004. The Submission Agreement of Respondent, James Billingsley, was filed on or about April 13, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: breach of a promissory note and failure to repay commission deficit. The causes of action related to Claimant's allegations that Respondent failed to repay a balance due on a loan that became due upon Respondent's termination of his employment with Claimant.

Unless specifically admitted in his Answer, Respondent James Billingsley, denied the allegations made in the Statement of Claim and asserted affirmative defenses that including the following: That the Claimant failed to honor its agreement, both stated and implied, to create a working environment that would allow the Respondent to perform his employment duties and obligations to the Claimant; the effect of the actions of the Claimant was to constructively discharge the Respondent from his employment without just cause; and that the Claimant by its actions in the conduct of the job environment it created for the Respondent is estopped from claiming the Respondent voluntarily resigned his employment.

In his Counterclaim, the Counter-Claimant, James Billingsley, alleged that Claimant failed to honor their agreement, which led to lost income and opportunity.

Counter-Respondent, Banc of America Investment Services, Inc., denied the allegations made in the Counterclaim and stated that Billingsley entered into a valid and binding express written contract with Banc of America that should repaid.

RELIEF REQUESTED

Claimant requested an award of \$46,500.00 on the balance due under the note, interest of \$1,860.00 during the term of the promissory note, \$5,292.00 for repayment of commission overdraw, plus interest, costs, attorneys' fees and any and all further relief that the panel deemed just and proper.

Respondent requested that the claims asserted against him be denied in their entirety and that he be awarded costs, attorneys' fees and such other relief that the panel deemed just and equitable.

In his Counterclaim, Counter-Claimant requested an award of \$37,096.00 in compensation owed, \$430.00 for reimbursement for covered employment expense, \$592.00 for reimbursement for parking expense, and \$1,900.00 for reimbursement for expenses to hire a sales assistant. Counter-Claimant also requested an unspecified amount for constructive wrongful discharge, interest, his costs, and attorneys' fees, and any and other relief as may be just.

Counter-Respondent requested that the claims asserted against it be denied their entirety and that it be awarded costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing, and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent, James Billingsley, is liable for and shall pay to Claimant, Banc of America Investment Services, Inc., the sum of \$46,500.00 in compensatory damages;
2. Respondent, James Billingsley, is liable for and shall pay to Claimant, Banc of America Investment Services, Inc., the sum of \$3,000.00 in commission deficits;
3. Counter-Respondent, Banc of America Investment Services, Inc., is liable for and shall pay to Counter-Claimant, James Billingsley, the sum of \$37,096.00, in the form of a setoff for amounts owed to Banc of America shown above, as a bonus for asset gathering while employed by Banc of America;
4. Counter-Respondent, Banc of America Investment Services, Inc., is liable for and shall pay to Counter-Claimant, James Billingsley, the sum of \$1,061.58 in costs, in the form of a setoff of the amounts owed to Banc of America shown above;
5. Counter-Respondent, Banc of America Investment Services, Inc., is liable for and shall pay to Counter-Claimant, James Billingsley, the sum of \$5,000.00, in the form of a setoff for amounts owed to Banc of America shown above, as a sanction against Banc of America for failure to produce all documents requested or needed in support of their claims against Billingsley;
6. After all setoffs are due, Respondent, James Billingsley, is liable for and shall pay to Claimant, Banc of America Services, Inc., the total sum of \$6,342.42;
7. The Panel has determined that the interest due Banc of America from Billingsley on the promissory note or on the commission deficit and the interest due to Billingsley from Banc of

America on the bonus and un-reimbursed expenses are to be offset against each other, with any difference being of an immaterial amount; and

8. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$1,000.00
Counterclaim filing fee	= \$ 250.00

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 event giving rise to the dispute. In this matter, the member firm is Banc of America Investment Services, Inc.

Member surcharge	\$	1,100.00
Pre-hearing process fee	\$	750.00
<u>Hearing process fee</u>	\$	<u>1,700.00</u>
Total Member Fees	\$	3,550.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

1	Pre-hearing session with one Arbitrator	x	450.00	\$	450.00
	December 17, 2004	1	session		
1	Pre-hearing session with Panel	x	1,000.00	\$	1,000.00
	July 2, 2004	1	session		
4	Hearing sessions	x	1,000.00	\$	4,000.00
	March 22, 2005	2	sessions		

March 23, 2005 2 sessions
Total Forum Fees \$ 5,450.00

The Arbitration Panel has assessed \$2,725.00 of the forum fees to Banc of America Investment Services, Inc.

The Arbitration Panel has assessed \$2,725.00 of the forum fees to James Billingsley.

Fee Summary

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

Initial Filing Fee	= \$	1,000.00
Member Fees	= \$	3,550.00
<u>Forum Fees</u>	= \$	<u>2,725.00</u>
Total Fees	= \$	7,275.00
<u>Less payments</u>	= \$	<u>-5,300.00</u>
Balance Due NASD Dispute Resolution	= \$	1,975.00

Respondent, James Billingsley, is liable for:

Counterclaim Filing Fee	= \$	250.00
<u>Forum Fees</u>	= \$	<u>2,725.00</u>
Total Fees	= \$	2,975.00
<u>Less payments</u>	= \$	<u>-1,250.00</u>
Balance Due NASD Dispute Resolution	= \$	1,725.00

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

ARBITRATION PANEL

Robert D. Garrett, Esq. - Public Arbitrator, Presiding Chair
Cynthia Ulrey - Public Arbitrator
Billy H. Ware - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert D. Garrett, Esq.
Robert D. Garrett, Esq.
Public Arbitrator, Presiding Chair

05/12/05
Signature Date

/s/ Cynthia Ulrey
Cynthia Ulrey
Public Arbitrator

05/11/05
Signature Date

/s/ Billy H. Ware
Billy H. Ware
Non-Public Arbitrator

05/12/05
Signature Date

05/16/05
Date of service

NASD Dispute Resolution, Inc.

Arbitration No. 04-01127

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Cynthia Ulrey - Public Arbitrator

Billy H. Ware - Non-Public Arbitrator

Concurring Arbitrators:


Robert D. Garrett, Esq.

Public Arbitrator, Presiding Chair

5/12/05
Signature Date

Cynthia Ulrey

Public Arbitrator

Signature Date

Billy H. Ware

Non-Public Arbitrator

Signature Date

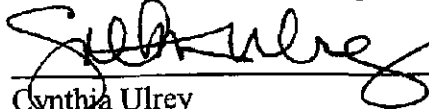
Date of service

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Cynthia Ulrey - Public Arbitrator
Billy H. Ware - Non-Public Arbitrator

Concurring Arbitrators:

Robert D. Garrett, Esq.
Public Arbitrator, Presiding Chair


Cynthia Ulrey

Public Arbitrator

Signature Date

5-11-05

Signature Date

Billy H. Ware
Non-Public Arbitrator

Signature Date

Date of service

ARBITRATION PANEL

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Cynthia Ulrey - Public Arbitrator
Billy H. Ware - Non-Public Arbitrator

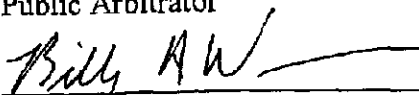
Concurring Arbitrators:

Robert D. Garrett, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Cynthia Ulrey
Public Arbitrator

Signature Date



Billy H. Ware
Non-Public Arbitrator

05-12-2005
Signature Date

Date of service