

---

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

---

In the Matter of the Arbitration Between:

Names of the Claimants  
Abilio Rodrigues and  
Cecilia B. Oliveira Rodrigues

Case Number: 04-01656

Name of the Respondent  
Banc of America Investment Services, Inc.

Hearing Site: Boca Raton, Florida

---

Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Abilio Rodrigues and Cecilia B. Oliveira Rodrigues, hereinafter collectively referred to as "Claimants": Robert H. Rex, Esq., Dickenson, Murphy, Rex and Sloan, Boca Raton, Florida.

For Banc of America Investment Services, Inc., hereinafter referred to as "Respondent": Rebecca C. Davis, Esq., Tate, Lazarini & Beall, PLC, Memphis, Tennessee.

**CASE INFORMATION**

Statement of Claim filed on or about: March 10, 2004.

Claimants signed the Uniform Submission Agreement: February 27, 2004.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: June 14, 2004.

Respondent signed the Uniform Submission Agreement: June 15, 2004.

Response to Motion to Dismiss filed by Claimants on or about: July 7, 2004.

Reply in Support of Dispositive Motion filed by Respondent on or about: October 22, 2004.

Supplemental Response to Respondent's Motion to Dismiss filed by Claimants on or about: October 26, 2004.

Motion for Reconsideration of Panel's Order on Motion to Dismiss filed by Claimants on or about: November 17, 2004.

Response to Claimants' Motion for Reconsideration of Order of Dismissal filed by Respondent on or about: November 23, 2004.

Reply to Respondent's Response to Claimants' Motion for Reconsideration of Panel's Order on Motion to Dismiss filed by Claimants: on or about December 1, 2004.

Supplement Information in Support of Motion for Reconsideration of Panel's Order on Motion to Dismiss filed by Claimants on or about: March 1, 2005.

Supplemental reply in Opposition to Claimants' Motion For Reconsideration of Order of Dismissal filed by Respondent on or about: March 11, 2005.

**CASE SUMMARY**

Claimants asserted the following causes of action: common law fraud; breach of fiduciary duty; negligent failure to supervise; and, negligence. The causes of action relate to the purchase and

sale of the Putnam Tax Smart Equity Fund, the Putnam New Opportunities Fund and the Putnam OTC & Emerging Growth Fund in Claimants' account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim, asserted various defenses and asserted a Motion to Dismiss on the bases that Claimants' claims were factually unsupported and lacked a legal basis.

In response to the Motion to Dismiss, Claimants denied the assertions therein.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$46,123.14, interest, costs and any other relief deemed just and proper.

Respondent requested dismissal of Claimants' claims.

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

On or about September 30, 2004, NASD Dispute Resolution notified the parties that George Davis' classification had changed from public to non-public arbitrator. The parties did not file any objections to proceeding with one public and two non-public arbitrators on the Panel.

On or about November 10, 2004, the Panel issued an order granting Respondent's Motion to Dismiss.

During a telephonic pre-hearing conference on March 30, 2005, the Panel heard argument of counsel on Claimants' Motion for Reconsideration of Panel's order granting Respondent's Motion to Dismiss.

On or about March 31, 2005, the Panel issued an order denying Claimants' Motion for Reconsideration of the Panel's November 10, 2004 order dismissing the claims in this matter.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the Motion to Dismiss, and response thereto, Claimants' Motion for Reconsideration of Panel's Order on Motion to Dismiss, and all responses and replies thereto and the record in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are dismissed in their entirety, with prejudice.

Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 175.00
--------------------------	-------------

#### **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. In this matter, the member firm Banc of America Investment Services, Inc. is a party.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed in this matter.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**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 the Panel @ \$600.00	= \$ 1,200.00
Pre-hearing conferences: September 23, 2004	1 session
March 30, 2005	1 session
<hr/>	
Total Forum Fees	= \$ 1,200.00

The Panel has assessed \$600.00 of the forum fees jointly and severally to Claimants.  
The Panel has assessed \$600.00 of the forum fees to Respondent.

**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 are not limited to: additional copies of arbitrator awards; copies of audio transcripts; retrieval of documents from archives; interpreters; and, security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 775.00
Less payments	= \$ 625.00
Balance Due NASD Dispute Resolution	= \$ 150.00

Respondent is solely liable for:

Member Fees	= \$ 2,625.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 3,225.00
Less payments	= \$ 2,925.00
Balance Due NASD Dispute Resolution	= \$ 300.00

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

**ARBITRATION PANEL**

Richard S. Zaifert, Esq.	-	Public Arbitrator, Presiding Chairperson
George L. Davis	-	Non-Public Arbitrator
Paul G. Soper	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

4/04/05

---

Richard S. Zaifert, Esq.  
Public Arbitrator, Presiding Chairperson

---

Signature Date

/s/

4/04/05

---

George L. Davis  
Non-Public Arbitrator

---

Signature Date

/s/

4/04/05

---

Paul G. Soper  
Non-Public Arbitrator

---

Signature Date

4/04/2005

---

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

Apr-04-05

NO. 479

P. 6'6

P.02


NASD Dispute Resolution  
Arbitration No. 04-01656  
Award Page 5

---

**ARBITRATION PANEL**

Richard S. Zaifert, Esq.	-	Public Arbitrator, Presiding Chairperson
George L. Davis	-	Non-Public Arbitrator
Paul G. Soper	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Richard S. Zaifert, Esq.  
Public Arbitrator, Presiding Chairperson

  
Signature Date

George L. Davis  
Non-Public Arbitrator

Signature Date

Paul G. Soper  
Non-Public Arbitrator

Signature Date

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

NASD Dispute Resolution  
Arbitration No. 04-01656  
Award Page 5

---

**ARBITRATION PANEL**

Richard S. Zaifert, Esq.	-	Public Arbitrator, Presiding Chairperson
George L. Davis	-	Non-Public Arbitrator
Paul G. Soper	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Richard S. Zaifert, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
George L. Davis  
Non-Public Arbitrator

4/4/05  
\_\_\_\_\_  
Signature Date

Paul G. Soper  
Non-Public Arbitrator

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

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

NASD Dispute Resolution  
Arbitration No. 04-01656  
Award Page 5

---

**ARBITRATION PANEL**

Richard S. Zalfert, Esq.	-	Public Arbitrator, Presiding Chairperson
George L. Davis	-	Non-Public Arbitrator
Paul G. Soper	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Richard S. Zalfert, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

George L. Davis  
Non-Public Arbitrator

Signature Date

Paul G. Soper  
Non-Public Arbitrator

4.4.2005  
Signature Date

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