

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Banc of America Investment Services, Inc.

and

04-02397
Phoenix, Arizona

Name of Respondent

Mason Bradshaw Zerbe, IV

Nature of the Dispute: Member vs. Associated Person.

REPRESENTATION OF PARTIES

Banc of America Investment Services, Inc. ("**Claimant**") was represented by Diane C. Fischer, Esq. and Ronald P. Kane, Esq., Kane & Fischer, Ltd., Chicago, Illinois.

Mason Bradshaw Zerbe, IV ("**Respondent**") did not appear or participate in the hearing. At the time of filing responsive pleadings, Respondent was represented by Stephen C. Lepley, Esq., Lepley law Offices, P.C., Scottsdale, Arizona. Mr. Lepley withdrew from representation on or about October 21, 2004.

CASE INFORMATION

The Statement of Claim was filed on or about April 6, 2004. BAI's Response to Motion to Extend Date of Response to Statement of Claim in Arbitration to Permit Preliminary Discovery in Challenge to Jurisdiction was filed on or about July 12, 2004. Motion to Preclude and For Telephonic Hearing on the Merits was filed on August 24, 2004. Submission Agreement of Claimant Banc of America Investment Services, Inc. was signed on March 28, 2004 by Andrew H. Smith.

Motion to Extend Date of Response to Statement of Claim in Arbitration to Permit Preliminary Discovery in Challenge to Jurisdiction was filed on or about June 14, 2004. Statement of Answer was filed by Respondent Mason Bradshaw Zerbe, IV on or about August 10, 2004. Response to Motion to preclude was filed on September 14, 2004. Submission Agreement of Respondent Mason Bradshaw Zerbe, IV was signed on September 29, 2004.

CASE SUMMARY

Claimant alleged that it had made loans to Respondent which are evidenced by promissory notes (Note 1 and Note 2) and that the Respondent has failed to repay such outstanding balances on the notes pursuant to their terms. The agreement between the parties specified that the notes would become due and payable, upon the termination of the Respondent. In addition, Claimant alleged that Respondent had a commission deficit (draws paid in excess of commission payouts) at the time of his termination.

Respondent denied the allegations set forth in the Statement of Claim. Respondent asserted the following affirmative defenses: lack of subject matter jurisdiction, lack of personal jurisdiction, laches, illegality, duress, coercion, estoppel, waiver, and fraud.

RELIEF REQUESTED

Claimant requested an award against the Respondent for the following:

- A. The principal balance due and owing under Note 1, \$45,000.00;
- B. Interest accrued during the term of Note 1 at the rate of 6% per annum, \$2,434.60;
- C. Interest at the rate of 6% per annum (\$7.40 per day) on the balance due and owing under Note 1 from the date of default (October 27, 2003) to the date of payment;
- D. The principal balance due and owing under Note 2; \$20,567.00;
- E. Interest accrued during the term of Note 1 at the rate of 6% per annum, \$283.92;
- F. Interest at the rate of 6% per annum (\$3.38 per day) on the balance due and owing under Note 1 from the date of default (October 27, 2003) to the date of payment;
- G. Repayment of commission overdraw, \$4,653.00;
- H. Interest at the statutory rate from October 27, 2003 through the date of payment of monies owed for commission overdraw;
- I. The costs of collection and of this proceeding including attorneys' fees as agreed to under the terms of Note 1 and Note 2; and
- J. Any and all further relief that the panel deems just and proper.

Respondent requested that the claims asserted against him be denied in their entirety.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Mason Bradshaw Zerbe, IV, has received due notice of the hearing as required under Rule 10315 of the NASD Code of Arbitration Procedure (the "Code") and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

By letter dated September 29, 2004, the parties were advised of the Arbitration Panel's decision to deny the Motion to Preclude.

On February 10, 2005, Respondent Mason Bradshaw Zerbe, IV filed a letter advising that he did not intend on participating in the hearing scheduled to commence on February 15, 2005.

On February 11, 2005, Claimant's attorney submitted a request to conduct the hearing telephonically. Mr. Zerbe did not respond to the request after being given an opportunity to respond. The Panel granted the request. On February 14, 2005, Mr. Zerbe, in an e-mail message stated that upon advice of counsel, he was not going to participate in the hearing.

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

1. Respondent Mason Bradshaw Zerbe, IV, shall be and hereby is liable for and shall pay to Claimant Banc of America Investment Services, Inc. the sum of \$70,220.00 (**Seventy Thousand Two Hundred Twenty Dollars and No Cents**) as compensatory damages.
2. Respondent Mason Bradshaw Zerbe, IV, shall be and hereby is liable for and shall pay to Claimant Banc of America Investment Services, Inc. the sum of \$7,860.58 (**Seven Thousand Eight Hundred Sixty Dollars and Fifty Eight Cents**) as interest due on the outstanding balances on the Notes through February 15, 2005.
3. Respondent Mason Bradshaw Zerbe, IV, shall be and hereby is liable for and shall pay to Claimant Banc of America Investment Services, Inc. the sum of \$7,191.92 (**Seven Thousand One Hundred Ninety One Dollars and Ninety Two Cents**) as costs pursuant to the terms of the Notes.
4. Respondent Mason Bradshaw Zerbe, IV, shall be and hereby is liable for and shall pay to Claimant Banc of America Investment Services, Inc. the sum of \$15,000.00 (**Fifteen Thousand Dollars and No Cents**) as attorneys' fees pursuant to the terms of the Notes.
5. That 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.

6. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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 = \$1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Banc of America Investment Services, Inc.

Member surcharge	\$	1,100.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	1,700.00
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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

2 Pre-hearing session(s) with Panel	x	750.00	\$	1,500.00
September 8, 2004	1	session		
September 10, 2004	1	session		
1 Hearing sessions	x	750.00	\$	750.00
February 15, 2005	1	session		
Total Forum Fees			\$	2,250.00

The Arbitration Panel has assessed \$2,250.00 of the forum fees to Banc of America Investment Services, Inc.

Fee Summary

Claimant, Banc of America Investment Services, Inc., shall be and hereby is liable for:

Initial Filing Fee	= \$	1,000.00
Member Fees	= \$	3,550.00
<u>Forum Fees</u>	= \$	2,250.00
Total Fees	= \$	6,800.00
<u>Less payments</u>	= \$	-5,300.00
Balance Due NASD Dispute Resolution	= \$	1,500.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Richard B. Bequette - Public Arbitrator, Presiding Chair
Thomas P. Delnoce - Public Arbitrator
Janet Weinstein, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Richard B. Bequette
Richard B. Bequette
Non-Public Arbitrator, Presiding Chair

February 15, 2005
Signature Date

/s/ Thomas P. Delnoce
Thomas P. Delnoce
Non-Public Arbitrator

February 15, 2005
Signature Date

/s/ Janet Weinstein
Janet Weinstein, Esq.
Non-Public Arbitrator

February 16, 2005
Signature Date

2/17/05
Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 04-02397
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Thomas P. Delnoce - Public Arbitrator

Janet Weinstein, Esq. - Non-Public Arbitrator

Concurring Arbitrators:


Richard B. Bequette
Non-Public Arbitrator, Presiding Chair

2/15/05
Signature Date

Thomas P. Delnoce
Non-Public Arbitrator

Signature Date

Janet Weinstein, Esq.
Non-Public Arbitrator

Signature Date

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NASD Dispute Resolution
Arbitration No. 04-02397
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Thomas P. Delnoce - Public Arbitrator
Janet Weinstein, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Richard B. Bequette
Non-Public Arbitrator, Presiding Chair


Thomas P. Delnoce
Non-Public Arbitrator

Signature Date


Signature Date

Janet Weinstein, Esq.
Non-Public Arbitrator

Signature Date

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Richard B. Bequette - Public Arbitrator, Presiding Chair
Thomas P. Delnoce - Public Arbitrator
Janet Weinstein, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Richard B. Bequette
Non-Public Arbitrator, Presiding Chair

Signature Date

Thomas P. Delnoce
Non-Public Arbitrator

Signature Date

Janet Weinstein, Esq.
Non-Public Arbitrator

Signature Date

2/16/05

Date of Service (For NASD office use only)