

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Felix J. Armijo, Claimant v. Banc of America Investment Services, Inc., Paul B. Shirk, II, and
John M. Norton, II, Respondents

Case Number: 04-07354

Hearing Site: Los Angeles, California

Nature of the Dispute: Customer v. Member and Associated Persons

REPRESENTATION OF PARTIES

For Claimant:

Felix J. Armijo
In Propria Persona
El Monte, California

For Respondents:

Scott T. Beall, Esq.
Tate, Lazarini & Beall, PLC
Memphis, Tennessee

CASE INFORMATION

Statement of Claim filed: October 13, 2004

Claimant's Uniform Submission Agreement signed: October 12, 2004

Joint Statement of Answer and Motion to Dismiss filed by Respondents Banc of America
Investment Services, Inc. and Paul B. Shirk, II: December 30, 2004

Respondent Banc of America Investment Services, Inc.'s Uniform Submission Agreement signed:
January 11, 2005

Respondent Paul B. Shirk, II's Uniform Submission Agreement signed: October 10, 2005

CASE SUMMARY

Claimant alleged breach of fiduciary duty, misrepresentations, non-disclosures, omission of facts,
and manipulations, involving Hartford annuities.

Respondents Banc of America Investment Services, Inc. and Paul B. Shirk, II denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim, asserted various affirmative defenses, and filed a Motion to Dismiss alleging that Claimant's claims were barred by the statute of limitations.

RELIEF REQUESTED

Claimant requested \$80,470.00 in compensatory damages, \$35,000.00 in punitive damages, and to cancel annuity contracts without cost or penalties.

Respondents Banc of America Investment Services, Inc. and Paul B. Shirk, II requested dismissal of the Claimant's Statement of Claim in its entirety, and costs, including attorney's fees, NASD costs, and travel expenses.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent John M. Norton, II did not file with NASD Dispute Resolution a properly executed submission agreement, but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

On December 6, 2004, Claimant dismissed Respondent John M. Norton, II from this arbitration.

On December 30, 2004, Claimant signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On December 30, 2004, Respondents Banc of America Investment Services, Inc. and Paul B. Shirk, II filed a Motion to Dismiss with their Answer. On March 4, 2005, Claimant filed a response to Respondents Banc of America Investment Services, Inc. and Paul B. Shirk, II's Motion to Dismiss. On March 18, 2005, the Panel held a telephonic pre-hearing conference to hear oral argument on the motion. On March 18, 2005, the Panel issued an Order denying Respondents Banc of America Investment Services, Inc. and Paul B. Shirk, II's Motion to Dismiss without prejudice.

On October 6, 2005, Respondents Banc of America Investment Services, Inc. and Paul B. Shirk, II filed a Motion for Sanctions Due to Claimant's Failure to Comply With Panel's Discovery Order. On October 7, 2005, the Panel ruled that Respondents' motion would be heard at the evidentiary hearing. At the evidentiary hearing on October 10, 2005, Claimant verbally opposed Respondents' motion. On October 10, 2005, after due deliberation, the Panel denied without prejudice Respondents Banc of America Investment Services, Inc. and Paul B. Shirk, II's Motion for Sanctions Due to Claimant's Failure to Comply With Panel's Discovery Order.

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) Claimant's claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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	= \$ 300.00
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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	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

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 Panel. The following fees are assessed:

2 Pre-hearing conference sessions with the Panel @ \$1,125.00/session = \$ 2,250.00
Pre-hearing conferences: February 25, 2005 1 session
March 18, 2005 1 session

1 Hearing session @ \$1,125.00/session = \$ 1,125.00
Hearing: October 10, 2005 1 session

Total Forum Fees = \$ 3,375.00

1. The Panel assessed \$1,687.50 of the forum fees to Claimant.
2. The Panel assessed \$1,687.50 of the forum fees jointly and severally to Respondents Banc of America Investment Services, Inc. and Paul B. Shirk, II.

Fee Summary

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

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 1,687.50</u>
Total Fees	= \$ 1,987.50
<u>Less payments</u>	<u>= \$(1,425.00)</u>
Balance Due NASD Dispute Resolution	= \$ 562.50
2. Respondent Banc of America Investment Services, Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	<u>= \$(5,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Respondents Banc of America Investment Services, Inc. and Paul B. Shirk, II are charged jointly and severally with the following fees and costs:

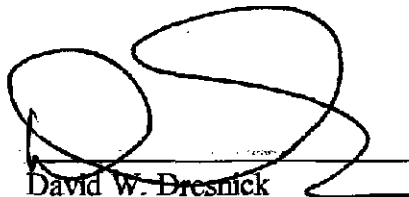
Forum Fees	= \$ 1,687.50
<u>Less payments made by Banc of America Investment Services, Inc.</u>	<u>= \$(2,750.00)</u>
Refund Due Respondent Banc of America Investment Services, Inc.	= \$(1,062.50)

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.


ARBITRATION PANEL

David W. Dresnick	-	Public Arbitrator, Presiding Chair
Cathleen M. Cobb	-	Public Arbitrator
Luther Delano Prater	-	Non-Public Arbitrator

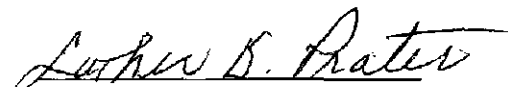
Concurring Arbitrators' Signatures


David W. Dresnick
Chair, Public Arbitrator

10/10/05
Signature Date


Cathleen M. Cobb
Public Arbitrator

10/10/05
Signature Date


Luther Delano Prater
Non-Public Arbitrator

10/10/05
Signature Date

10/10/05
Date of Service