

Award
NASD Dispute Resolution

 **ORIGINAL**

In the Matter of the Arbitration Between:

Scott C. Williams, Claimant v. Banc of America Investment Services, Inc. and Marty Leclerc,
Respondents

Banc of America Investment Services, Inc., Counter-Claimant v. Scott C. Williams, Counter-
Respondent

Case Number: 04-07830

Hearing Site: San Francisco, California

Nature of the Disputes: Associated Person v. Member and Associated Person
Member v. Associated Person

REPRESENTATION OF PARTIES

For Claimant / Counter-Respondent:
(hereinafter referred to as "Claimant")

Richard E. Levine, Esq.
Levine & Baker LLP
San Francisco, California

For Respondent / Counter-Claimant
Banc of America Investment Services, Inc.
and Respondent Marty Leclerc:
(hereinafter referred to as "Respondents")

Robert T. Sullwold, Esq.
Sullwold & Hughes
San Francisco, California

CASE INFORMATION

Statement of Claim filed: November 10, 2004

Claimant's Uniform Submission Agreement signed: November 1, 2004

Joint Statement of Answer filed by Respondents: February 4, 2005

Counterclaim filed by Respondent Banc of America Investment Services, Inc.: February 4, 2005

Claimant's Response to Counterclaim filed: February 28, 2005

CASE SUMMARY

In his Statement of Claim, Claimant alleged breach of contract and fraud relating to his employment with Respondent Banc of America Investment Services, Inc. Claimant also stated that he is no longer obligated to honor the promissory note he agreed to when joining Respondent Banc of America Investment Services, Inc.

In their Answer, Respondents denied the allegations of wrongdoing set forth in Claimant's Statement of Claim and asserted various affirmative defenses.

In its Counterclaim, Respondent Banc of America Investment Services, Inc. alleged that Claimant failed to pay a promissory note due and owing to Respondent Banc of America Investment Services, Inc.

In his Response to the Counterclaim, Claimant denied the allegation of wrongdoing and asserted various affirmative defenses.

RELIEF REQUESTED

In his Statement of Claim, Claimant requested unspecified compensatory damages, unspecified punitive damages, declaratory relief relating to the promissory note, and costs, including attorney's fees.

In their Answer, Respondents requested dismissal of Claimant's Statement of Claim in its entirety.

In its Counterclaim, Respondent Banc of America Investment Services, Inc. requested \$91,750.00 for the principle balance due and owing under the promissory note as of September 17, 2004, \$2,199.75 in interest, interest at the rate of 5% per annum from September 17, 2004, and costs, including attorney's fees.

In his Response to the Counterclaim, Claimant requested dismissal of Respondent Banc of America Investment Services, Inc.'s Counterclaim in its entirety and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with the NASD Dispute Resolution a properly executed submission agreement but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code") and having answered the claim, appeared and testified at the hearing, are

bound by the determination of the Panel on all issues submitted.

On February 23, 2005, Claimant and Claimant's counsel 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.

On February 24, 2005, Respondent Banc of America Investment Services, Inc.'s counsel signed a Waiver Agreement on Respondent Banc of America Investment Services, Inc.'s behalf 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.

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, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Banc of America Investment Services, Inc. is liable to and shall pay Claimant the net sum of \$58,250.00 in compensatory damages, which is calculated based on the following:
 - a. Respondent Banc of America Investment Services, Inc. is liable to and shall pay Claimant the sum of \$150,000.00 in compensatory damages for Claimant's claim.
 - b. Claimant is liable to and shall pay Banc of America Investment Services, Inc. the sum of \$91,750.00 in compensatory damages for Respondent Banc of America Investment Services, Inc.'s counterclaim. This amount represents the principle amount due on the March 26, 2004 promissory note at issue.
- 2) Respondent Marty Leclerc is dismissed with prejudice.
- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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	= \$ 250.00
Respondent Banc of America Investment Services, Inc.'s Counterclaim filing fee	= \$1,000.00

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	= \$1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	= \$2,200.00
Total Member Fees	= \$4,450.00

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 Chair or the parties and the Panel. The following fees are assessed:

(1) Pre-hearing conference session with the Panel @ \$1,000.00/session	= \$1,000.00
Pre-hearing conference: April 21, 2005 1 session	
(5) Hearing sessions @ \$1,000.00/session	= \$5,000.00
Hearings: September 26, 2005 2 sessions	
September 27, 2005 2 sessions	
September 28, 2005 1 session	

Total Forum Fees	= \$6,000.00
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1. The Panel assessed \$6,000.00 of the forum fees to Respondent Banc of America Investment Services, Inc.

Fee Summary

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

Initial Filing Fee	= \$ 250.00
<u>Less payments</u>	= \$(1,450.00)
Refund Due Claimant	= \$(1,200.00)

2. Respondent Banc of America Investment Services, Inc. is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 4,450.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$11,450.00
<u>Less payments</u>	<u>= \$ (6,200.00)</u>
Balance Due NASD Dispute Resolution	= \$ 5,250.00

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

Julie D. Soo	-	Public Arbitrator, Presiding Chair
Vivian L. Kral	-	Public Arbitrator
Herbert L. Brown	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Julie D. Soo
Julie D. Soo
Chair, Public Arbitrator

10/13/05
Signature Date

Vivian L. Kral
Vivian L. Kral
Public Arbitrator

Signature Date

Herbert L. Brown
Herbert L. Brown
Non-Public Arbitrator

Signature Date

10/13/05
Date of Service

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