

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Denise Radomski, Claimant v. Banc of America Investment Services, Inc., E*Trade Securities LLC, and Irene R. Sinow, Respondents

E*Trade Securities LLC, Cross-Claimant v. Banc of America Investment Services, Inc. and Irene R. Sinow, Cross-Respondents

Case Number: 04-08016

Hearing Site: San Francisco, California

Nature of the Dispute: Customer v. Members and Associated Person
 Member v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimant

Denise Radomski ("Radomski"):

Jeffrey A. Feldman, Esq.
Law Offices of Jeffrey A. Feldman
San Francisco, California

For Respondent/Cross-Claimant

E*Trade Securities LLC ("E*Trade"):

John Bersin, Esq.
E*Trade Securities LLC
Rancho Cordova, California

For Respondent/Cross-Respondent

Banc of America Investment Services, Inc. ("BofA"):

Peter R. Boutin, Esq.
Keesal, Young & Logan
San Francisco, California

For Respondent/Cross-Respondent

Irene R. Sinow ("Sinow"):

In Propria Persona
San Anselmo, California

CASE INFORMATION

Statement of Claim filed: November 17, 2004

Radomski's Uniform Submission Agreement signed: November 10, 2004

E-Trade's Answer and Crossclaim filed: January 13, 2005

E*Trade's Uniform Submission Agreement signed: January 13, 2005

BofA's Answer to Statement of Claim and Answer to Crossclaim filed: February 25, 2005

BofA's Uniform Submission Agreement signed: February 9, 2005

Sinow's Answer to Statement of Claim dated: June 16, 2005

Radomski's Amendment to Statement of Claim filed: March 21, 2006

CASE SUMMARY

Radomski alleged breach of fiduciary duty against Sinow and BofA, negligent supervision against BofA, and negligence, fraud, and violation of Corporations Code §25,400 et. seq. against all respondents. Radomski's allegations involved various unspecified securities.

E*Trade denied the allegations of wrongdoing set forth in Radomski's Statement of Claim and asserted various affirmative defenses. In its Crossclaim, E*Trade alleged fraud against Sinow and against BofA based on respondeat superior.

BofA denied the allegations of wrongdoing set forth in Radomski's Statement of Claim and E*Trade's Crossclaim, and asserted various affirmative defenses.

Sinow denied the allegations of wrongdoing.

After the settling her claims against BofA and E*Trade, Radomski amended her claim to reflect the damages sought from the sole remaining respondent, Sinow.

RELIEF REQUESTED

Claimant requested unspecified compensatory damages, punitive damages, rescission, disgorgement of transactions costs, interest, and costs, including attorney's fees.

E*Trade requested dismissal of Claimant's Statement of Claim in its entirety, or, in the alternative, an award for indemnity and contribution against BofA and Sinow for amounts of liability assessed against E*Trade, and costs.

BofA requested dismissal of Claimant's Statement of Claim in its entirety, denial of E*Trade's Crossclaim, and costs.

Sinow's Answer to the claims did not specify any relief requests.

Claimant, by amendment, requested damages not exceeding \$25,000.00, exclusive of costs and interest, against Sinow, the sole remaining respondent at the time of the hearing.

OTHER ISSUES CONSIDERED AND DECIDED

Sinow did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure and having answered the claim is bound by the determination of the Panel on all issues submitted.

On November 10, 2004, Radomski and Radomski'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 April 5, 2005, E*Trade's counsel signed a Waiver Agreement on E*Trade's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 13, 2005, BofA's counsel signed a Waiver Agreement on BofA's behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On April 14, 2005, Sinow 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 October 3, 2005, Cross-Claimant E*Trade withdrew its claims against Sinow without

prejudice. On November 1, 2005, Sinow consented to being dismissed without prejudice by E*Trade.

On October 5, 2005, Claimant dismissed E*Trade with prejudice.

On October 7, 2005, Cross-Claimant E*Trade withdrew its claims against BofA without prejudice. On October 25, 2005, BofA consented to being dismissed without prejudice by E*Trade.

On November 27, 2005, Claimant dismissed BofA with prejudice.

On March 21, 2006, the Panel conducted a conference call with the parties to discuss rescheduling the hearings that were previously postponed at Sinow's request for health reasons. Sinow failed to appear at this scheduling conference call. The Panel reviewed Sinow's doctor's note, dated December 30, 2005, and her March 13, 2006 e-mail wherein she provided her mental health condition. After due deliberation, the Panel elected to hear Radomski's argument in support of rescheduling the hearing dates. The Panel decided to schedule the evidentiary hearings for June 13-14, 2006. In addition, the Panel granted Radomski's oral motion to amend her Statement of Claim to specify damages of \$50,000 or less (to reflect the relief requested from the sole remaining respondent) and for a hearing by one arbitrator. The Chairperson, Sterling Frost, became the sole arbitrator on this matter.

Sinow did not appear at the hearing on the merits. Upon review of the file and the representations made by/on behalf of the Radomski, the undersigned Arbitrator determined that Sinow was properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code"). The undersigned Arbitrator also considered Sinow's second doctor's note, dated May 27, 2006, and determined that the hearing would proceed without Sinow in attendance.

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 Arbitrator decided in full and final resolution of the issues submitted for determination as follows:

- 1) Sinow is liable to and shall pay Radomski the sum of \$14,300.00 in compensatory damages.
- 2) Sinow is liable to and shall pay Radomski the sum of \$770.00 as reimbursement for costs.
- 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	=	waived
E*Trade's Cross-claim filing fee	=	\$500.00

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 firms BofA and E*Trade are parties and the following fees are assessed to each:

Member Surcharge	=	\$ 1,500.00
Pre-Hearing Process Fee	=	\$ 750.00
Hearing Process Fee	=	\$ 2,200.00
Total Member Fees	=	\$ 4,450.00

Adjournment Fees

The following adjournment fees are assessed:

Adjournment of the January 3-6, 2006 hearings requested by Sinow	=	\$ 1,000.00
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The Panel assessed \$1,000.00 of the postponement fee to Sinow.

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:

Adjournment of the January 3-6, 2006 hearings requested by Sinow	=	\$ 300.00
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The Panel assessed \$300.00 of the cancellation fee to Sinow.

Forum Fees and Assessments

The Arbitrator assessed forum fees for each session conducted or each decision rendered on a discovery-related motion decided on the papers. A 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:

(1) Pre-hearing conference session with a single arbitrator		
@ \$ 450.00/session		= \$ 450.00
Pre-hearing conference:	November 29, 2005	1 session
(3) Pre-hearing conference sessions with the Panel @ \$1,000.00/session		= \$ 3,000.00
Pre-hearing conferences:	June 14, 2005	1 session
	June 16, 2005	1 session
	March 21, 2006	1 session
(2) Hearing sessions with the sole arbitrator @ \$450.00/session		= \$ 900.00
Hearings:	June 13, 2006	2 sessions
<hr/> Total Forum Fees		= \$ 4,350.00

1. The Arbitrator assessed \$2,683.33 of the forum fees to Sinow.
2. The Arbitrator assessed \$1,000.00 of the forum fees to Radomski for the June 14, 2005 conference call. Radomski's attorney failed to appear at this call.
3. The Arbitrator assessed \$333.33 of the forum fees to BofA.
4. The Arbitrator assessed \$333.33 of the forum fees to E*Trade.

Fee Summary

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

Initial Filing Fee	= \$ waived
Forum Fees	= \$ 1,000.00
Total Fees	= \$ 1,000.00
Less payments	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 1,000.00

2. BofA is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 333.33
Total Fees	= \$ 4,783.33
Less payments	= \$(4,450.00)
Balance Due NASD Dispute Resolution	= \$ 333.33

3. E*Trade is charged with the following fees and costs:

Cross-claim filing fee	= \$ 500.00
Member Fees	= \$ 4,450.00
Forum Fees	= \$ 333.33
Total Fees	= \$ 5,283.33
Less payments	= \$(4,450.00)
Balance Due NASD Dispute Resolution	= \$ 833.33

4. Sinow is charged with the following fees and costs:

Adjournment Fee	= \$ 1,000.00
Three-Day Cancellation Fee	= \$ 300.00
Forum Fees	= \$ 2,683.33
Total Fees	= \$ 3,983.33
Less payments	= \$ (0.00)
Balance Due NASD Dispute Resolution	= \$ 3,983.33

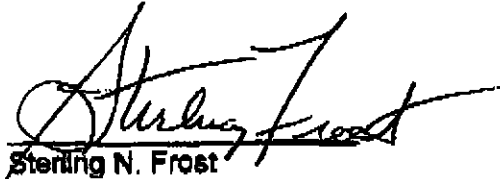
All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATOR

Sterling N. Frost

Public Arbitrator

Arbitrator's Signature



Sterling N. Frost
Public Arbitrator

6/17/06
Signature Date

June 15, 2006
Date of Service
(NASD Use Only)