

**Stipulated Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Richard L. Gennaro and Carol M. Gennaro (Claimants) v. Quick & Reilly, Inc., Banc of America Investment Services, Inc., Bank of America and Daniel J. McDonald (Respondents)

Case Number: 04-08118

Hearing Site: Newark, New Jersey

Nature of the Dispute: Customers v. Members, Non-Member, and Associated Person.

REPRESENTATION OF PARTIES

Claimants Richard L. Gennaro ("R.Gennaro") and Carol M. Gennaro ("C. Gennaro") hereinafter collectively referred to as "Claimants": Gregory M. Gennaro, Esq., Clark, NJ.

Respondents Quick & Reilly, Inc. ("Quick & Reilly"); Banc of America Investment Services, Inc. ("BAISI"); Bank of America ("BOA"); and Daniel J. McDonald ("McDonald") hereinafter collectively referred to as "Respondents": John O. Lukanski, Esq., and William E. Goydan, Esq., Wolff & Samson PC, West Orange, NJ.

CASE INFORMATION

Statement of Claim filed on or about: November 23, 2004.

R. Gennaro signed the Uniform Submission Agreement: December 16, 2004.

C. Gennaro signed the Uniform Submission Agreement: December 16, 2004.

Statement of Answer filed by Respondents on or about: March 17, 2005.

Quick & Reilly signed the Uniform Submission Agreement: March 18, 2005.

BAISI signed the Uniform Submission Agreement: March 18, 2005.

McDonald signed the Uniform Submission Agreement: March 11, 2005.

BOA did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: fraud, misrepresentation, negligence, suitability, omission of material facts, breach of fiduciary duty, failure to supervise, negligence, breach of contract, errors, and failure to execute. The causes of action relate to Qwest and variable annuities.

Unless specifically admitted in their Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the amount of \$140,484.00 as follows:

- a. As to C. Gennaro's IRA, Contract Number 99 637 638, damages in the amount of \$12,932.00;
- b. As to C. Gennaro's IRA, Account Number 2369217712, damages in the amount of \$1,359.00;
- c. Damages for any interest or fees charged in connection with the margin account;
- d. As to R. Gennaro's IRA, damages in the amount of \$11,943.00;
- e. As to the Eaton Vance mutual fund, damages in the amount of \$10,000.00 plus interest;
- f. As to the Equitable Accumulator Plus annuity, damages in the amount of \$87,750.00 plus reasonable interest;
- g. Damages for any surrender or other fees in connection with the liquidation of the accounts; and
- h. Compensatory damages in the amount of \$16,500.00.

In addition, Claimants requested punitive damages in the amount of \$365,000.00; accounting and disgorgement of commissions, fees and bonuses; costs and reasonable attorneys' fees; and such other relief as may be deemed just and equitable.

Respondents requested dismissal of the Statement of Claim in its entirety; expungement of this action from McDonald's CRD record; and costs and fees for defending this arbitration.

OTHER ISSUES CONSIDERED AND DECIDED

BOA is not a member of NASD and is not required to submit to NASD Dispute Resolution's jurisdiction.

By letter dated March 21, 2005 Claimants dismissed their claims against BOA.

By letter dated April 15, 2005 addressed to Respondents' Counsel and copied NASD, Claimants dismissed their claims for damages with respect to the following accounts:

1. Carol Gennaro – IRA Account Number 2369217712 – initial investment of \$2,000.00 as stated in paragraph 17 of the Statement of Claim.
2. Eaton Vance – Account Number 76607918 – initial investment of \$45,000.00 as stated in paragraph 32 of the Statement of Claim.
3. Eaton Vance – Account Number 76027962 (now 2360697516) as stated in paragraph 41 of the Statement of Claim.
4. Margin Account – Account Number 2360697516 as stated in paragraph 22 – 25 of the Statement of Claim.

By letters dated December 29, 2005, Claimants dismissed, with prejudice, their claims against BAISI, Quick & Reilly, and McDonald.

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

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent McDonald's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent McDonald must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130 of the NASD Code of Arbitration Procedure, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is false.

2. Each party shall bear its own respective costs, including attorneys' fees.
3. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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	= \$ 375.00
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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 firms Banc of America Investment Services, Inc. and Quick & Reilly, Inc. are parties.

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00

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:

November 15, 29, and December 1 and 15, 2005 settled by the parties	= \$ 300.00
Per the parties' agreement:	
Claimants' share	= \$ 150.00
Respondents Quick & Reilly, BAISI, and McDonald's share, jointly and severally	= \$ 150.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @\$450.00 per session	= \$ 450.00
Pre-hearing conference: October 17, 2005 1 session	

Three (3) Pre-hearing conference sessions with the Panel @\$1,200.00 per session	
	= \$ 3,600.00

Pre-hearing conferences:	June 13, 2005	1 session
	August 8, 2005	1 session
	August 29, 2005	1 session

Two (2) hearing session with the Panel @ \$1,200.00 per session	= \$ 2,400.00
Hearing date: April 11, 2006 2 sessions	

Total Forum Fees	= \$ 6,450.00
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1. The Panel assessed \$2,400 of the forum fees against Respondent McDonald.
2. In accordance with the parties' agreement,
 - a. Claimants are assessed \$2,025.00 of the remaining forum fees, jointly and severally.
 - b. Respondents Quick & Reilly, BAISI, and McDonald are assessed \$2,025.00 of the remaining forum fees, jointly and severally.

Fee Summary

1. Claimants are liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 2,025.00
<u>Three Day Cancellation Fee</u>	= \$ 150.00
Total Fees	= \$ 2,550.00
<u>Less payments</u>	= \$ 2,550.00
Balance Due NASD Dispute Resolution	= \$.00

3. BAISI is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
Total Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ 8,225.00
Refund Due BAISI	= \$ 1,225.00

4. Respondents Quick & Reilly, BAISI, and McDonald are jointly and severally liable for:

Forum Fees	= \$ 2,025.00
<u>Three Day Cancellation Fees</u>	= \$ 150.00
Total Fees	= \$ 2,175.00
<u>Less payments</u>	= \$ 2,175.00
Balance Due NASD Dispute Resolution	= \$ 0.00

5. McDonald is solely liable for:


<u>Forum Fees</u>	= \$ 2,400.00
Total Fees	= \$ 2,400.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,400.00

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

ARBITRATION PANEL

Susan C. Lushing, Esq.	-	Public Arbitrator, Presiding Chair
Peter C. Dinos	-	Public Arbitrator
Harold Wolf	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Susan C. Lushing, Esq.
Public Arbitrator, Presiding Chair

4/19/06
Signature Date

Peter C. Dinos
Public Arbitrator

Signature Date

Harold Wolf
Non-Public Arbitrator

Signature Date

April 27, 2006
Date of Service (For NASD office use only)

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