

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Bobby Dean Taylor, Claimant v. Banc of America Investment Services, Inc., GE Life And Annuity Assurance Company and Francis J. Dolan, Respondents

Banc of America Investment Services, Inc. and Francis J. Dolan, Third-Party Claimants v. Patricia Taylor, Third-Party Respondent

GE Life And Annuity Assurance Company, Third-Party Claimant v. Patricia Taylor, Third-Party Respondent

Case Number: 04-08301

Hearing Site: San Francisco, California

Nature of the Dispute: Customer vs. Member, Non-Member and Associated Person
Member and Associated Person vs. Customer
Non-Member vs. Customer

REPRESENTATION OF PARTIES

For Claimant:

Christopher Hays
Law Offices of Christopher Hays
San Francisco, California

For Respondents Banc of America Investment Services, Inc. and Francis J. Dolan:

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

For Respondent GE Life And Annuity Assurance Company:

Frank Gooch, III
Gilchrist & Rutter
Santa Monica, California

For Third-Party Respondent Patricia Taylor:

Patricia Taylor
Vallejo, California

CASE INFORMATION

Statement of Claim filed: December 6, 2004

Claimant's Notification to Respondents Re Claim of Damages for Income Tax Losses filed: May 18, 2005

Claimant's Memorandum of Points and Authorities in Opposition to Motions to Dismiss of Banc of America Investment Services, Inc. ("BAI") and GE Life And Annuity Assurance Company ("GELAAC") filed: November 17, 2005

Declaration of Bobby Dean Taylor in Opposition to Motions to Dismiss of BAI and GELAAC filed: November 17, 2005

Declaration of Lloyd Cunningham in Opposition to Motions to Dismiss of BAI and GELAAC filed: November 17, 2005

Claimant's Uniform Submission Agreement signed: November 30, 2004

Answer, Affirmative Defenses, Third-Party Claim and Motion to Dismiss Statement of Claim of Respondents BAI and Francis J. Dolan filed: February 11, 2005

Reply of Respondents BAI and Francis J. Dolan to Claimant's Memorandum of Points and Authorities in Opposition to Motions to Dismiss filed: November 23, 2005

Respondent BAI's Uniform Submission Agreement signed: February 11, 2005

Respondent Francis J. Dolan's Uniform Submission Agreement signed: February 10, 2005

Answer of Respondent GELAAC to Statement of Claim filed: February 9, 2005

Third-Party Claim of Respondent GELAAC against Patricia Taylor filed: February 9, 2005

GELAAC's Motion to Dismiss Statement of Claim of Bobby Dean Taylor and Appendix of Exhibits in Support Thereof filed: November 3, 2005

Reply of GELAAC in Support of Motion to Dismiss Statement of Claim of Bobby Dean Taylor filed: November 28, 2005

Respondent GELAAC's Uniform Submission Agreement signed: March 7, 2005

Answer of Third-Party Respondent Patricia Taylor filed: August 16, 2005

CASE SUMMARY

Claimant alleged that Respondent GELAAC permitted Patricia Taylor to withdraw funds from Claimant's annuity accounts by forging Claimant's signature and mailing withdrawal requests directly to GELAAC, and that GELAAC honored those requests without receiving any authorization or confirmation from Claimant. Claimant also alleged the following claims with respect to his GELAAC annuity accounts: 1) Conversion; 2) Breach of Fiduciary Duty; 3) Breach of Contract; 4) Negligence; and 5) Accounting.

Respondents BAI and Francis J. Dolan denied Claimant's allegations of wrongdoing and denied any liability to Claimant. Respondents BAI and Francis J. Dolan also asserted affirmative defenses.

In their Third-Party Claim, Respondents BAI and Francis J. Dolan alleged that Third-Party Respondent Patricia Taylor was a customer of BAI and joint account owner with Bobby Dean Taylor of an investment account at BAI and further alleged that Patricia Taylor is subject to NASD jurisdiction in this matter. Respondents BAI and Francis J. Dolan further alleged that Mrs. Taylor was able to obtain access to the Claimant's funds at GELAAC by purportedly forging Claimant's signature on GELAAC withdrawal request forms. Respondents BAI and Francis J. Dolan further alleged that in the event Mrs. Taylor is found liable in this matter, BAI and Mr. Dolan seek recovery and/or indemnification for all monies paid to Claimant, punitive damages, all attorneys' fees, costs and expenses incurred in defending this matter and prosecuting their third-party claims, and pre- and post-judgment interest.

Respondent GELAAC alleged fraud and deceit in its Third-Party Claim against Patricia Taylor.

Third-Party Respondent Patricia Taylor denied any liability with respect to the third-party claims in this matter.

RELIEF REQUESTED

Claimant requested:

1. An accounting of all sums disbursed by Respondents without Claimant's authorization;
2. Payment to Claimant for the amount due from Respondents as a result of the accounting;
3. Interest on the foregoing sum pursuant to California Civil Code Section 3287;
4. Costs;
5. Damages for income tax losses; and
6. Such other and further relief as the Panel deems just and proper.

Respondents BAI and Mr. Dolan requested that this action be dismissed, that the Panel direct that all costs and assessments by the NASD be born by Claimant and that Respondents BAI and Mr. Dolan be awarded their preparation costs, travel expenses, attorneys' fees and/or such other further and general relief that the Panel deems reasonable and just.

Referencing their Third-Party Claim, Respondents BAI and Mr. Dolan sought recovery and/or indemnification for all monies paid to Claimant, punitive damages, all attorneys' fees, costs and expenses incurred in defending this matter and prosecuting their third-party claims, and pre- and post-judgment interest.

Respondent GELAAC requested that Claimant take nothing against GELAAC by reason of his Statement of Claim, that this action be dismissed, costs and attorney's fees, and such other and further relief as the Panel deems appropriate.

Referencing its Third-Party Claim, Respondent GELAAC requested compensatory damages in an amount according to proof, attorney's fees and costs, pre- and post-judgment interest at the legal rate, and such other and further relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Third-Party Respondent Patricia Taylor did not file with NASD Dispute Resolution ("NASD-DR") a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Respondents' Third-Party Claims, is bound by the determination of the Panel on all issues submitted.

On December 31, 2004, 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, GELAAC'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.

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 or about October 4, 2005, the Panel disallowed the filing of GELAAC's Third-Party Claim against Jay Swoyer.

Third-Party Respondent Patricia Taylor did not participate during the phone conference held December 2, 2005. Pursuant to Rule 10318 of the Code, the Panel determined that Patricia Taylor received proper notice of the phone conference and ruled to proceed in her absence.

The Panel 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, the positions of the parties relative to Respondents' Motions to Dismiss, and the oral arguments presented during the December 2, 2005 pre-hearing conference, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. The motions of BAI, Francis J. Dolan and GELAAC to dismiss the claim of Bobby Dean Taylor are granted. Accordingly, all claims by Claimant Bobby Dean Taylor are dismissed.
2. The claims of BAI, Francis J. Dolan and GELAAC against Patricia Taylor are dismissed.
3. Each party shall bear its own costs, including attorney's fees.
4. All other relief not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$250.00
BAI and Dolan's third-party claim filing fee	= \$500.00
GELAAC's third-party claim filing fee	= \$250.00

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, BAI 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>	<u>= \$2,200.00</u>
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/Panel. The following fees are assessed:

(3) Pre-hearing conference sessions with the Panel @ \$1,000.00/session	=	\$3,000.00
Pre-hearing conferences: September 22, 2005	1 session	
October 4, 2005	1 session	
December 2, 2005	1 session	

Total Forum Fees	=	\$3,000.00
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The Panel assessed \$666.66 of the forum fees to Claimant Bobby Dean Taylor.

The Panel assessed \$666.66 in forum fees jointly and severally to Respondents BAI and Francis J. Dolan.

The Panel assessed \$666.66 in forum fees to Respondent GELAAC.

The Panel waived forum fees in the amount of \$1,000.02.

Fee Summary

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

Initial Filing Fee	= \$	250.00
Forum Fees	= \$	666.66
Total Fees	= \$	916.66
Less Waiver of Filing Fee	= \$(250.00)
Balance Due NASD-DR	= \$	666.66

2. Respondent BAI is charged with the following fees and costs:

Member Fees	= \$	4,450.00
Less Payments	= \$(4,450.00)
Balance Due NASD-DR	= \$	0.00

3. Respondents BAI and Francis J. Dolan are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$	500.00
Forum Fees	= \$	666.66
Total Fees	= \$	1,166.66
Less Payments by BAI	= \$(1,500.00)
Refund Due BAI	= \$(333.34)

4. Respondent GELAAC is charged with the following fees and costs:

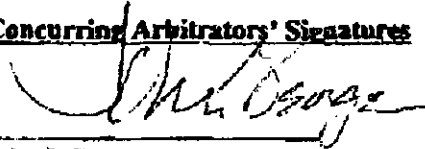
Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 666.66
Total Fees	= \$ 916.66
Less Payments	= \$(1,250.00)
Refund Due GELAAC	= \$(333.34)

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

ARBITRATION PANEL

John J. George	-	Public Arbitrator, Presiding Chair
Kathryn J. Toronto	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



John J. George
Chair, Public Arbitrator

DEC 13 2005

Signature Date

Kathryn J. Toronto
Public Arbitrator

Signature Date

Jerold R. Babin
Non-Public Arbitrator

Signature Date

12/14/05

Date of Service

4. Respondent GELAAC is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 666.66
Total Fees	= \$ 916.66
Less Payments	= \$(1,250.00)
Refund Due GELAAC	= \$(333.34)

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Kathryn J. Toronto	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

John J. George
Chair, Public Arbitrator

Kathryn J. Toronto

Kathryn J. Toronto
Public Arbitrator

Signature Date

12-13-05

Signature Date

Jerold R. Babin
Non-Public Arbitrator

Signature Date

12/14/05

Date of Service

4. Respondent GELAAC is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 666.66
Total Fees	= \$ 916.66
Less Payments	= \$(1,250.00)
Refund Due GELAAC	= \$(333.34)

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

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Kathryn J. Toronto	-	Public Arbitrator
Jerold R. Babin	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

John J. George
Chair, Public Arbitrator

Signature Date

Kathryn J. Toronto
Public Arbitrator

Signature Date



Jerold R. Babin
Non-Public Arbitrator

12/13/05
Signature Date

12/14/05
Date of Service