
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-08609

Edgar Botero-Henao
Amparo Botero de Malkun
Lucila Henao de Botero
Katherine Prieto de Botero
Edgar Botero as Custodian for Edgar Felipe
Edgar Botero as Custodian for Stephanie Botero
Edgar Botero as Signatory for Inversiones Kierans Ltda.
Edgar Botero as Custodian for Alexandria Botero
Edgar Botero as Custodian for Alexandra Botero

Name of the Respondent

Hearing Site: Boca Raton, Florida

Banc of America Investment Services, Inc.

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Edgar Botero-Henao, Amparo Botero de Malkun, Lucila Henao de Botero, Katherine Prieto de Botero, Edgar Botero as Custodian for Edgar Felipe, Edgar Botero as Custodian for Stephanie Botero, Edgar Botero as Signatory for Inversiones Kierans Ltda., Edgar Botero as Custodian for Alexandria Botero and Edgar Botero as Custodian for Alexandra Botero, hereinafter collectively referred to as "Claimants": Luis F. Navarro, Esq., Jeffrey L. Clements, Esq. and Leslie Schreiber, Esq., Navarro & Associates, P.L., Coral Gables, Florida.

For Banc of America Investment Services, Inc ("BAI"), hereinafter referred to as "Respondent": Scott T. Beall, Esq., Tate, Lazarini & Beall, PLC, Memphis, Tennessee.

CASE INFORMATION

Statement of Claim filed on or about: January 14, 2005.

Claimant Edgar Botero-Henao signed the Uniform Submission Agreement: January 14, 2005.

Claimant Amparo Botero de Malkun signed the Uniform Submission Agreement: January 14, 2005.

Claimant Lucila Henao de Botero signed the Uniform Submission Agreement: January 16, 2005.

Claimant Katherine Prieto de Botero signed the Uniform Submission Agreement: January 16, 2005.

Claimant Edgar Botero as Custodian for Edgar Felipe signed the Uniform Submission Agreement: January 14, 2005.

Claimant Edgar Botero as Custodian for Stephanie Botero signed the Uniform Submission Agreement: January 14, 2005.

Claimant Edgar Botero as Signatory for Inversiones Kierans Ltda. signed the Uniform Submission Agreement: January 14, 2005.

Claimant Edgar Botero as Custodian for Alexandria Botero signed the Uniform Submission Agreement: January 14, 2005.

Claimant Edgar Botero as Custodian for Alexandra Botero signed the Uniform Submission Agreement: January 14, 2005.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: April 15, 2005.

Respondent signed the Uniform Submission Agreement: April 26, 2005.

Claimants' Memorandum of Law in Opposition to Respondent's Answer and Motion to Dismiss filed on or about: June 3, 2005.

Respondent's Reply to Claimants' Memorandum of Law in Opposition to Motion to Dismiss filed on or about: June 9, 2005.

Claimants' Memorandum of Law in Opposition to Respondent's Affirmative Defenses of Statute of Limitations filed on or about: July 25, 2005.

Respondent's Brief in Support of the Motion to Dismiss Claimants' Claims filed on or about: July 25, 2005.

Respondent's Reply to Claimants' Opposition to the Motion to Dismiss/Statute of Limitations filed on or about: July 29, 2005.

Claimants' Reply in Opposition to Respondent's Motion to Dismiss/Affirmative Defense of Statute of Limitations filed on or about: August 3, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: breach of fiduciary and contractual duties; common law fraud; negligence and gross negligence; and, violation of federal securities laws. The causes of action relate to Claimants' investments in various unspecified mutual funds within the Putnam and Alliance mutual fund families.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested: 1) actual damages in the amount of \$1,245,220.00; 2) attorneys' fees; 3) pre and post judgment interest; 4) costs; 5) unspecified punitive damages; and, 6) such other relief as deemed necessary and proper.

Respondent requested: 1) that this action be dismissed; 2) that the Panel direct that all costs and assessments by NASD Dispute Resolution ("NASD") be borne by Claimants; 3) that Respondent be awarded its preparation costs; 4) attorneys' fees; and, 5) such other further and general relief to which it may be entitled.

OTHER ISSUES CONSIDERED AND DECIDED

On or about June 16, 2005, the Panel issued an order that directed the parties to prepare legal briefs on the issue of statute of limitations and how it applies to this case in accordance with NASD rules and procedures. The Panel further ordered both parties to be prepared to set a date for a subsequent conference to hear oral argument on this issue.

On or about August 4, 2005, oral argument was heard on Respondent's Motion to Dismiss. After careful consideration, and a review of all documents, the Panel issued an order on August 4, 2005, which by majority vote of the Panel granted the Motion to Dismiss, with prejudice.

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, the Motion to Dismiss and responses thereto, and oral argument presented during the telephonic conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, and the parties' respective requests for attorneys' fees, are denied.

FEEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 500.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent BAI is a party and a member firm.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,000.00</u>
Total Member Fees	= \$ 8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

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:

There were no three-day cancellation fees assessed during these proceedings.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an

arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

There were no injunctive relief fees assessed during these proceedings.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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:

Two (2) Pre-hearing sessions with Panel @ 1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: June 27, 2005 1 session	
August 4, 2005 1 session	

Total Forum Fees	= \$ 2,400.00
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The Panel has assessed \$1,200.00 of the forum fees to Claimants, jointly and severally.
The Panel has assessed \$1,200.00 of the forum fees to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	= \$ 1,200.00
Total Fees	= \$ 1,700.00
<u>Less payments</u>	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 1,200.00
Total Fees	= \$ 9,750.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

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

ARBITRATION PANEL

Bernard A. Becker, CPA	-	Public Arbitrator, Presiding Chairperson
David T. Adonailo, Esq.	-	Public Arbitrator
Robert B. Kane	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Bernard A. Becker, CPA
Public Arbitrator, Presiding Chairperson

August 9, 2005
Signature Date

/s/
David T. Adonailo, Esq.
Public Arbitrator

August 11, 2005
Signature Date

/s/
Robert B. Kane
Non-Public Arbitrator

August 10, 2005
Signature Date

August 11, 2005
Date of Service (For NASD Dispute Resolution office use only)

ARBITRATION PANEL

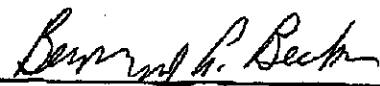
Bernard A. Becker, CPA

David T. Adonailo, Esq.

Robert B. Kane

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator
- Non-Public Arbitrator

Concurring Arbitrators' Signatures



Bernard A. Becker, CPA
Public Arbitrator, Presiding Chairperson

8/9/05
Signature Date

David T. Adonailo, Esq.
Public Arbitrator

Signature Date

Robert B. Kane
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution office use only)

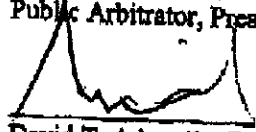
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Robert B. Kane

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- Public Arbitrator
- Non-Public Arbitrator

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Bernard A. Becker, CPA
Public Arbitrator, Presiding Chairperson



David T. Adonailo, Esq.
Public Arbitrator

Signature Date

8-11-05

Signature Date

Robert B. Kane
Non-Public Arbitrator

Signature Date

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David T. Adonailo, Esq.	-	Public Arbitrator
Robert B. Kane	-	Non-Public Arbitrator

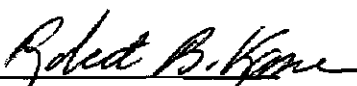
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Signature Date

David T. Adonailo, Esq.
Public Arbitrator

Signature Date



Robert B. Kane
Non-Public Arbitrator



Signature Date

Date of Service (For NASD Dispute Resolution office use only)

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AUG 11 2005
FL ARBITRATION