

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Banc of America Investment Services, Inc., Claimant v. Richard Ina, Daniel Morilak, and Michael Parziale, Respondents

Richard Ina, Daniel Morilak, and Michael Parziale, Counter-Claimants v. Banc of America Investment Services, Inc., Counter-Respondent

Richard Ina, Daniel Morilak, and Michael Parziale, Third-Party Claimants v. David Ohanian, Third-Party Respondent

Case Number: 05-01659

Hearing Site: San Diego, California

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

**REPRESENTATION OF PARTIES**

For Claimant and Counter-Respondent

Banc of America Investment Services, Inc. ("BAIS"), and

Third-Party Respondent David Ohanian ("Ohanian"): Michael J. Lawson, Esq.  
Morgan, Lewis, & Bockius LLP  
San Francisco, California

Jeffrey A. Wortman, Esq.  
Steefel, Levitt & Weiss  
Los Angeles, California

For Respondents/Counter-Claimants/  
Third-Party Claimants Richard Ina ("Ina"),  
Daniel Morilak ("Morilak"), and  
Michael Parziale ("Parziale"):

Daren H. Lipinsky, Esq.  
Brown & Lipinsky  
Chino Hills, California

R. Shawn Nelson, Esq.  
Rizio & Nelson  
Santa Ana, California

### **CASE INFORMATION**

BAIS' Statement of Claim filed: March 29, 2005

BAIS' Uniform Submission Agreement signed: March 28, 2005

Joint Statement of Answer, Counterclaim, and Third-Party Claim filed by Ina, Morilak, and Parziale: July 22, 2005

Ina's Uniform Submission Agreement signed: December 24, 2005

Morilak's Uniform Submission Agreement signed: January 11, 2006

Parziale's Uniform Submission Agreement signed: December 29, 2005

BAIS and Ohanian's Answer to Counterclaim and Third-Party Claim filed: December 5, 2005

### **CASE SUMMARY**

BAIS alleged that Ina, Morilak, and Parziale each entered into two promissory notes with BAIS, their former employer, and that the unpaid balance of the promissory notes became due when Ina, Morilak, and Parziale's employment with BAIS was terminated.

Ina, Morilak, and Parziale denied the allegations of wrongdoing set forth in BAIS' Statement of Claim. In their Counterclaim and Third-Party Claim, Ina, Morilak, and Parziale set forth ten causes of action: violation of Labor Code §970, fraud and deceit, negligent misrepresentation, wrongful termination in violation of public policy, breach of oral contract, tortious interference with prospective economic advantage, violation of Labor Code Section 1050, defamation, promissory estoppel, and declaratory judgment.

BAIS and Ohanian denied the allegations of wrongdoing set forth in Ina, Morilak, and Parziale's Counterclaim and Third-Party Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

BAIS requested the following relief from Ina: \$548,333.33 as return of principle on two promissory notes, \$5,708.45 in accrued interest, 5% interest beginning from November 17, 2004, and costs, including attorneys' fees.

BAIS requested the following relief from Morilak: \$127,333.33 as return of principle on two promissory notes, \$1,066.01 in accrued interest, 5% interest beginning from November 17, 2004, and costs, including attorneys' fees.

BAIS requested the following relief from Parziale: \$685,000.00 as return of principle on two promissory notes, \$6,784.33 in accrued interest, 5% interest beginning from November 17, 2004, and costs, including attorneys' fees.

Ina, Morilak, and Parziale requested dismissal of Claimant's Statement of Claim in its entirety, and costs, including attorney's fees. In their Counterclaim and Third-Party Claim, Ina, Morilak, and Parziale requested in excess of \$12 million, \$3.2 million, and \$14 million, respectively, in compensatory damages, unspecified exemplary and punitive damages, prejudgment interest, and costs, including attorneys' fees. Ina, Morilak, and Parziale also requested (1) an injunction enjoining BAIS and Ohanian from making any false misrepresentations to or otherwise harassing Ina, Morilak, and Parziale's clients, and (2) a declaratory judgment determining that Ina, Morilak, and Parziale are not obligated to pay the dispute promissory notes, that the notes are cancelled, null, and void, or that Ina, Morilak, and Parziale are entitled to offset any obligation they may owe to BAIS against the damages they are entitled to recover.

BAIS and Ohanian requested dismissal of Ina, Morilak, and Parziale's Counterclaim and Third-Party Claim in their entirety and costs.

### **OTHER ISSUES CONSIDERED AND DECIDED**

In a court order dated August 16, 2005 ("Court Order"), the Honorable Patricia A. Y. Cowett of the San Diego Superior Court compelled several of Ina, Morilak, and Parziale's claims in San Diego Superior Court Case No. GIC845037 to arbitration and ordered BAIS "to pay all costs unique to the Arbitration forum."

Ohanian did not file with 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 Third-Party claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On March 13, 2006, Ina, Morilak, and Parziale dismissed, without prejudice, their fourth cause of action (wrongful termination in violation of public policy) and their tenth cause of action (declaratory judgment) from their Counterclaim and Third-Party Claim.

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

- 1) BAIS' claims are denied in their entirety.
- 2) BAIS and Ohanian are jointly and severally liable to and shall pay Ina the sum of \$675,000.00 in compensatory damages.
- 3) BAIS and Ohanian are jointly and severally liable to and shall pay Morilak the sum of \$200,000.00 in compensatory damages.
- 4) BAIS and Ohanian are jointly and severally liable to and shall pay Parziale the sum of \$733,000.00 in compensatory damages.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure, 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	= \$ 2,000.00
Ina, Morilak, and Parziale Counterclaim/Third-Party Claim fee	= \$ 600.00

#### **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 BAIS is a party and the following fees are assessed:

Member Surcharge	= \$ 2,800.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,500.00
<b>Total Member Fees</b>	<b>= \$ 9,050.00</b>

#### **Forum Fees and Assessments**

The Panel 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: April 25, 2006 1 session

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$ 1,200.00  
Pre-hearing conference: March 21, 2006 1 session

(23) Hearing sessions @ \$1,200.00/session = \$27,600.00  
Hearings: June 14, 2006 2 sessions  
June 15, 2006 2 sessions  
June 16, 2006 2 sessions  
August 2, 2006 2 sessions  
August 3, 2006 2 sessions  
August 4, 2006 2 sessions  
August 25, 2006 2 sessions  
August 28, 2006 2 sessions

August 29, 2006	2 sessions
September 18, 2006	2 sessions
September 19, 2006	2 sessions
September 20, 2006	1 session

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<b>Total Forum Fees</b>	<b>= \$29,250.00</b>
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The \$29,250.00 in forum fees is assessed to BAIS pursuant to the Court Order.

**Fee Summary**

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

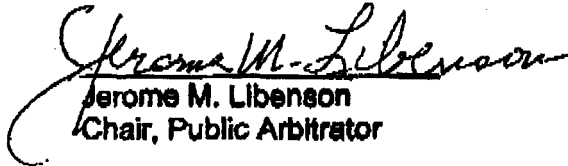
Initial claim filing fee	= \$ 2,000.00
Counterclaim and Third Party Claim filing fee (BAIS is assessed this fee pursuant to the Court Order)	= \$ 600.00
Member Fees	= \$ 9,050.00
<u>Forum Fees</u>	<u>= \$ 29,250.00</u>
<u>Total Fees</u>	<u>= \$ 40,900.00</u>
<u>Less payments</u>	<u>= \$(12,250.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 28,650.00</b>

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**

Jerome M. Libenson	-	Public Arbitrator, Presiding Chair
George L. Tindall	-	Public Arbitrator
Patricia Reilly	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Jerome M. Libenson  
Chair, Public Arbitrator

9-25-06  
Signature Date

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George L. Tindall  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Patricia Reilly  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

9/27/06  
Date of Service

**ARBITRATION PANEL**

Jerome M. Libenson	-	Public Arbitrator, Presiding Chair
George L. Tindall	-	Public Arbitrator
Patricia Reilly	-	Non-Public Arbitrator

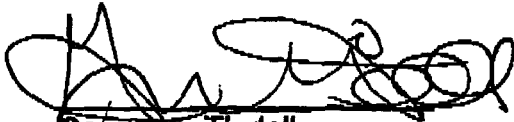
**Concurring Arbitrators' Signatures**

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Jerome M. Libenson  
Chair, Public Arbitrator

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Signature Date

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George L. Tindall  
Public Arbitrator

9/26/06

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Signature Date

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Patricia Reilly  
Non-Public Arbitrator

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Signature Date

9/27/06

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Date of Service



**ARBITRATION PANEL**

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Patricia Reilly  
Non-Public Arbitrator

9-27-06  
Signature Date

9/27/06  
Date of Service