

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Efrain J. Lopez

and

05-02205
Chicago, Illinois

Name of Respondent

Banc One Securities Corporation

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

Efrain J. Lopez ("**Claimant**") was represented by Randy S. Cohn, Esq. and Gregory B. Simon, Esq., SimmonsCooper LLC, East Alton, Illinois.

Banc One Securities Corporation ("**Respondent**") was represented by Kenneth F. Berg, Esq., Ulmer Berne LLP, Chicago, Illinois.

CASE INFORMATION

The Statement of Claim was filed on or about April 26, 2005. Submission Agreement of Claimant Efrain J. Lopez was signed on April 4, 2005.

Statement of Answer was filed by Respondent Banc One Securities Corporation on or about July 19, 2005. Submission Agreement of Respondent Banc One Securities Corporation was signed on June 6, 2005 by Ellen F. Anderson

CASE SUMMARY

Claimant asserted the following causes to action: breach of fiduciary duty; breach of contract; violation of the Securities Exchange Act; violation of the Illinois Consumer Fraud and Deceptive Business Practices Act; violation of the Illinois Securities Law of 1953; and negligence. The causes of action relate to the investments in various mutual funds. Specifically, Claimant alleged as follows:

The investment in mutual fund shares recommended by Banc One was, of course, subject to the risks of general stock market volatility, the risks of concentrating in a specific sector, the risks entailed in the stocks of the individual companies

comprising the fund, the risks attendant to the increased volatility of small capitalization companies and the additional volatility of exposure attendant to any foreign stocks in the funds. These risks were not disclosed to Efrain.

Furthermore, neither Banc One nor its brokers ever explained the material difference between Class A and Class B shares to Efrain.

Claimant also alleged that Banc One failed to properly supervise its brokers.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated:

This case involves three business decisions that he made: the first to invest in two mutual funds in May 1999; the second to invest additional money in three mutual funds in September 2000; and the third to leave the money invested until October 2002 while watching the value of the investments decline.

In addition, Respondent stated:

Here, after receiving the disclosures in the prospectus, after receiving account statements at regular intervals, and after experiencing the severe market decline in March 2000, Lopez not only failed to object or cut his losses, but he invested additional money in similar equity investments. Accordingly, he ratified all transactions and he must bear the losses.

RELIEF REQUESTED

Claimant requested an award as follows:

- A. Compensatory damages in excess of \$126,000;
- B. Punitive damages in excess of \$375,000;
- C. All costs of this Arbitration including an award of reasonable attorney's fees and pre-award interest pursuant to the Illinois Securities Act; and
- D. Whatever additional relief the Arbitration Panel believes just and within its authority.

Respondent requested that the claims asserted in this matter be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

At the conclusion of the Claimant's presentation of evidence, Respondent asserted a Motion to Dismiss based upon the argument that the claims were barred by the statute of limitations. After considering the arguments presented by the parties, the evidence presented to that point and the pleadings, the Arbitration Panel took the motion under

advisement. After completing its deliberations in this matter, the Arbitration Panel hereby denies the motion.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Banc One Securities Corporation is liable for and shall pay to Claimant Efrain J. Lopez the sum of \$65,000.00 (**Sixty Five Thousand Dollars and No Cents**) as compensatory damages.
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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

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. In this matter, the member firm(s) is Banc One Securities Corporation.

Member surcharge	\$	2,250.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	<u>7,000.00</u>

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 Decision on discovery-related motions on the papers by a single arbitrator	x	\$200.00	\$	200.00
		1 session		
1 Pre-hearing session(s) with Panel	x	1,200.00	\$	1,200.00
September 20, 2005	1	session		
4 Hearing sessions	x	1,200.00	\$	4,800.00
May 31, 2006	2	sessions		
June 1, 2006	2	sessions		
Total Forum Fees			\$	<u>6,200.00</u>

The Arbitration Panel has assessed \$3,100.00 of the forum fees to Efrain J. Lopez.

The Arbitration Panel has assessed \$3,100.00 of the forum fees to Banc One Securities Corporation.

Fee Summary

Claimant, Efrain J. Lopez, is liable for:

Initial Filing Fee	= \$	375.00
Forum Fees	= \$	3,100.00
Total Fees	= \$	3,475.00
Less payments	= \$	-1,575.00
Balance Due NASD Dispute Resolution	= \$	<u>1,900.00</u>

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Respondent, Banc One Securities Corporation, is liable for:

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	<u>3,100.00</u>
Total Fees	= \$	10,100.00
<u>Less payments</u>	= \$	<u>-7,500.00</u>
Balance Due NASD Dispute Resolution	= \$	2,600.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

Thomas F. Mahoney, Esq. - Public Arbitrator, Presiding Chair
Randall B. Gold, Esq. - Public Arbitrator
Larry M. Dreyfus, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Thomas F. Mahoney
Thomas F. Mahoney, Esq.
Public Arbitrator, Presiding Chair

2 June 2006
Signature Date

Randall B. Gold, Esq.
Public Arbitrator

Signature Date

Larry M. Dreyfus, Esq.
Non-Public Arbitrator

Signature Date

6/5/06
Date of Service (For NASD office use only)

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Respondent, Banc One Securities Corporation, is liable for:

Member Fees	= \$	7,000.00
Forum Fees	= \$	3,100.00
Total Fees	= \$	10,100.00
Less payments	= \$	-7,500.00
Balance Due NASD Dispute Resolution	= \$	2,600.00

All balances are due to NASD Dispute Resolution

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Thomas F. Mahoney, Esq.
Public Arbitrator, Presiding Chair

Signature Date

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Public Arbitrator

Signature Date

Larry M. Dreyfus, Esq.
Non-Public Arbitrator

6/2/06

Signature Date

Date of Service (For NASD office use only)