

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

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In the Matter of the Arbitration Between:

Alexander Filimonov and Laura Filimonov, individually and on behalf of the Business Exchange International, Inc., Claimants v. Banc of America Investment Services, Inc., Respondent

Case Number: 05-06232

Hearing Site: San Francisco, California

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Nature of the Dispute: Customers v. Member

**REPRESENTATION OF PARTIES**

For Claimants:

Kirk George Smith, Esq.  
Shepherd, Smith & Edwards, LLP  
Houston, Texas

For Respondent:

Rodney Acker, Esq.  
Jenkins & Gilchrist  
Dallas, Texas

**CASE INFORMATION**

Statement of Claim received: December 7, 2005

Claimant Alexander Filimonov's Uniform Submission Agreement signed: November 11, 2005

Claimant Laura Filimonov's Uniform Submission Agreement signed: November 11, 2005

Claimant Business Exchange International, Inc.'s Uniform Submission Agreement signed: December 27, 2005

Statement of Answer and Motion to Dismiss filed by Respondent: March 7, 2006

Respondent's Uniform Submission Agreement signed: March 1, 2006

### **CASE SUMMARY**

Claimants alleged breach of contract and warranties, violation of California unfair trade practices and consumer protection laws, violation of the Securities Exchange Act of 1934, violation of the California Securities Act, violation of California fraud statutes, and violation of common law. Claimants' allegations involved various unspecified securities.

Respondent denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested between \$500,000.00 and \$1,000,000.00 in compensatory damages, punitive damages, interest, and costs, including attorney's fees.

Respondent requested dismissal of Claimants' Statement of Claim in its entirety, and costs, including attorney's fees.

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

On March 7, 2006, Respondent filed a Motion to Dismiss based on statutes of limitations together with its Answer. On March 30, 2006, Claimants filed an Opposition to Respondent's Motion to Dismiss. On April 20, 2006, Respondent filed a Reply Brief in support of its Motion to Dismiss. On June 13, 2006, the Panel held a conference call with the parties to hear oral argument on Respondent's Motion to Dismiss. On June 15, 2006, the Panel deliberated further via conference call. After due deliberation in executive session, the Panel decided to grant Respondent's Motion to Dismiss.

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

- 1) Respondent's Motion to Dismiss is granted, and Claimants' claims are dismissed with prejudice.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, 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	= \$ 375.00
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#### **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 Banc of America Investment Services, Inc., is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
<b>Total Member Fees</b>	<b>= \$ 7,000.00</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:

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 2,400.00  
Pre-hearing conferences: April 25, 2006      1 session  
   June 13, 2006      1 session

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

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,575.00
Less payments	= \$(1,700.00)
<b>Refund Due</b>	<b>= \$ (125.00)</b>

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

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 8,200.00
Less payments	= \$(3,000.00)
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 5,200.00</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**

Lester Friedman	-	Public Arbitrator, Presiding Chair
Nancy A. Yonge	-	Public Arbitrator
Edward J. Harkins	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Lester Friedman  
Chair, Public Arbitrator

6/20/06  
Signature Date

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Nancy A. Yonge  
Public Arbitrator

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

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Edward J. Harkins  
Non-Public Arbitrator

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Signature Date

June 20, 2006  
Date of Service  
(NASD Use Only)

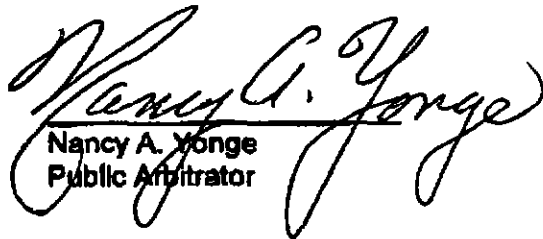
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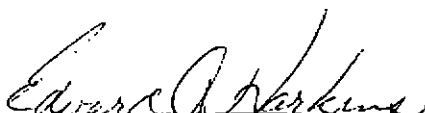
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