

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.
In the matter of the Arbitration Between

Name of Claimant

Kim Williams

NASD Arbitration
#94-00721

vs.

Name of Respondent

BA Investment Services, Inc.
Mark Nunes

REPRESENTATION

For Claimant: Karl R. Molineux, Esq., Smith, Merrill & Peffer, San Ramon, California

For Respondent BAIS: Arne D. Wagner, Esq., Bank of America, San Francisco, California

CASE INFORMATION

Statement of Claim was filed: February 25, 1994

Claimant's submission agreement was signed: February 14, 1994

Statement of Answer filed by BAIS: May 27, 1994

BAIS' Submission Agreement signed: May 27, 1994

HEARING INFORMATION

The evidentiary hearing was held in San Francisco, California on February 1, 1995, and lasted 2 sessions.

CASE SUMMARY

Claimant alleged unauthorized automated transfers of funds were made from his account into Mr. Nunes' personal account for the purpose of effecting trades in futures and options on treasury bonds. Claimant alleged these actions constituted fraud, unlawful commingling of funds and violations of federal securities laws.

Respondent BAIS denied the allegations of wrongdoing and denied liability for the actions of Mr. Nunes. Respondent BAIS further denied liability because Mr. Nunes was not employed as a broker and was not authorized to make trades for BAIS customers, because the trades in question were a private business arrangement made between Claimant and Nunes outside the scope of Nunes' employment and outside the purview of BAIS, and also because BAIS does not trade in commodities and futures.

RELIEF REQUESTED

Claimant requested damages of \$10,900 plus interest, punitive damages, costs of arbitration and attorney's fees.

Respondent BAIS requested dismissal of all claims, and an award of all costs of arbitration.

OTHER ISSUES

Marc Nunes was named as a Respondent in this action but proper service was never effected, and the panel determined it had no jurisdiction over Mr. Nunes.

The parties have agreed to receive conformed copies of the award, while the original remains on file with the NASD.

AWARD

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

1. Claimant reasonably should have known he was dealing with Mr. Nunes as an individual, not as a representative of Respondent BAIS. Respondent BAIS reasonably should have known that Mr. Nunes was handling an investment for Claimant contrary to the terms of his employment. Each party being equally at fault, Claimant is awarded, and Respondent BAIS is liable for and shall pay to Claimant, the sum of \$5,450, representing one-half of Claimant's loss.

2. The claims for interest and punitive damages are dismissed.
- 3.. The parties shall each bear their respective costs of arbitration including attorney's fees.

FORUM FEE

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the parties are to share equally the filing and forum fees.

Claimant deposited \$120 in filing fees; Respondent is to pay \$60 directly to Claimant for its one-half share.

Forum fees of \$800 for 2 sessions are to be shared by the parties; Claimant has deposited \$400 as a hearing session fee and owes nothing more. Respondent is assessed \$400; this amount is payable to the NASD, Inc.

ARBITRATOR

Name <u>John P. Sparrow</u>	Public / Industry
John P. Sparrow	Public

Concurring Arbitrator Signature

John P. Sparrow
John P. Sparrow

Date of Decision: Feb. 16, 1995

Date Served: 02/22/95