

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

Rebecca Diane Lancaster and Carol
Denise (Lancaster) Lucky, Independent
Co-Executrixes of the Estate of Marie
Lancaster, Deceased

Case Number: 05-01789

Name of the Respondents

Banc of America Investment Services, Inc.;
Michael Dennis Degolier; and,
Terry Wayne Johnson

Hearing Site: Dallas, Texas

NATURE OF THE DISPUTE

Public Customer vs. Member Firm and Associated Persons

REPRESENTATION OF PARTIES

Claimant Rebecca Diane Lancaster and Carol Denise (Lancaster) Lucky, Independent Co-Executrixes of the Estate of Marie Lancaster, Deceased, hereinafter referred to as "Claimant": Earl Rutledge, Esq., of Hurst, Texas.

Respondents Banc of America Investment Services, Inc ("BAI"), Michael Dennis Degolier ("Degolier") and Terry Wayne Johnson ("Johnson"), hereinafter collectively referred to as "Respondents": Jim Parker, Esq., of the firm of Johnson, Rial & Parker, located in Austin, Texas.

CASE INFORMATION

Statement of Claim filed: April 5, 2005.

Claimant signed the Uniform Submission Agreement: March 8, 2005.

Letters Testamentary filed by Claimant on: August 1, 2005.

Claimant's Response to Respondents' Motion to Dismiss filed: September 7, 2005.

Joint Statement of Answer filed by Respondents on: August 29, 2005.

Respondents' Motion to Dismiss filed on: August 29, 2005.

Respondent BAI signed the Uniform Submission Agreement: May 10, 2005.

Respondent Degolier signed the Uniform Submission Agreement: April 29, 2005.

Respondent Johnson signed the Uniform Submission Agreement: May 3, 2005.

CASE SUMMARY

Claimant asserted the following causes of action:

1. Recommending and purchasing securities that were unsuitable and unduly risky given Claimant's age, financial situation, lack of investment knowledge and experience;
2. In defying, disregarding and failing to use diligence when Claimant wanted to liquidate her account;
3. Misrepresenting or failing to disclose material facts concerning the investments purchased with Claimant's retirement savings funds; and,
4. Breach of fiduciary duty.

The causes of action resulted from Respondents actions in regard to Claimant's retirement savings portfolio.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses:

1. All of Claimant's claims died with her and were not revived under the Texas Survival Statute;
2. The claims made against Respondents are frivolous and without support in the evidence;
3. Respondents deny the existence of a fiduciary duty other than the limited fiduciary duty of brokers in non-discretionary accounts, and they deny breaching a fiduciary duty;
4. The claims are barred by the applicable statute of limitations;
5. Claimant has failed to mitigate her damages, if any;
6. Claimant's damages, if any, were the result of conscious decisions made by her, not the conduct of anyone else; and,
7. Claimant ratified the transactions in the account by accepting their benefit and not complaining until after the marker went against her.

RELIEF REQUESTED

Claimants Rebecca Diane Lancaster and Carol Denise (Lancaster) Lucky, Independent Co-Executrixes of the Estate of Marie Lancaster, Deceased requested:

Compensatory Damages	\$ 78,099.96
Interest	Interest at the legal rate in Texas (5%) for 550 days to 3/1/05 at \$10.70/day (\$5,884.24)
Attorneys' Fees	Through 2/28/05 (\$33,795.84)
Other Costs	Including filing fees
Other Monetary/Non-Monetary Relief if any:	Court cost for filing suit; mediation and Lancaster's video

deposition and a court reporter.

Respondents requested that the Claimant take nothing, that they recover their attorneys' fees and costs, that Degolier's and Johnson's CRD records be expunged, and for such other relief as they may be entitled.

OTHER ISSUES CONSIDERED AND DECIDED

On April 30, 2005, after this arbitration was filed, Claimant Marie Lancaster died. On or about August 1, 2005, Letters Testamentary were filed naming Rebecca Diane Lancaster and Carol Denise (Lancaster) Lucky as executrixes of the estate.

On or about November 18, 2005, the Panel denied Respondents' Motion to Dismiss.

AWARD

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

1. The Panel finds no recoverable injury on the part of the Respondents, and the Claimant's estate shall take nothing on its claims. The claims are dismissed with prejudice and denied in their entirety;
2. The Panel finds that Respondents incurred substantial expense in assuring that the matter be heard in the forum which was agreed upon contractually. Therefore, Claimants Rebecca Diane Lancaster and Carol Denise (Lancaster) Lucky, Independent Co-Executrixes of the Estate of Marie Lancaster, Deceased, are jointly and severally liable for and shall pay to the Respondents, Banc of America Investment Services, Inc., Michael Dennis Degolier and Terry Wayne Johnson, the sum of \$14,310.24 as partial compensation for costs and expenses incurred in the defense of the claims made, particularly in relation to the expenses of securing hearing of the claims in the forum contractually agreed upon;
3. All remaining costs of arbitration, including any attorneys' fees, shall be borne by the party incurring that cost, unless specifically enumerated in this decision;
4. The Respondents' request for expungement is denied; and,
5. Any and all relief not specifically addressed herein is denied.

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 = \$ 225.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Banc of America Investment Services, Inc. is a party and the following member fees are assessed:

Member surcharge	= \$ 1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,700.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed: None.

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:

One (1) Pre-hearing session with Panel @ \$750.00	= \$ 750.00
Pre-hearing conference: November 4, 2005 1 session	
Five (5) Hearing sessions @ \$750.00	= \$ 3,750.00
Hearing Dates:	
May 22, 2006	2 sessions
May 23, 2006	2 sessions
May 24, 2006	1 session
<hr/> Total Forum Fees	<hr/> = \$ 4,500.00

The Panel has assessed \$2,250.00 of the forum fees, jointly and severally, to Claimants Rebecca Diane Lancaster and Carol Denise (Lancaster) Lucky, Independent Co-Executrixes of the Estate of Marie Lancaster, Deceased, and the remaining \$2,250.00 of the forum fees, jointly and severally, to Respondents, Banc of America Investment Services, Inc., Michael Dennis Degolier and Terry Wayne Johnson.

FEE SUMMARY

Claimants Rebecca Diane Lancaster and Carol Denise (Lancaster) Lucky, Independent Co-Executrixes of the Estate of Marie Lancaster, Deceased, are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 2,250.00
Total Fees	= \$ 2,475.00
Less payments	= \$ 1,425.00

Balance Due NASD Dispute Resolution = \$ 1,050.00

Respondent Banc of America Investment Services, Inc. is solely liable for:

Member Fees	= \$ 3,550.00
<u>Less payments</u>	<u>= \$ 3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Banc of America Investment Services, Inc., Michael Dennis Degolier and Terry Wayne Johnson are jointly and severally liable for:

Forum Fees	= \$ 2,250.00
<u>Less payments</u>	<u>= \$ 1,650.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

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

ARBITRATION PANEL

Andrea U. Calve, JD - Public Arbitrator, Presiding Chairperson
Sanford D. Sanes - Public Arbitrator
Keith L. Saunders - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Andrea U. Calve, JD
Public Arbitrator, Presiding Chairperson

Signature Date

Sanford D. Sanes
Public Arbitrator

Signature Date

Keith L. Saunders
Non-Public Arbitrator

Signature Date

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

Balance Due NASD Dispute Resolution = \$ 1,050.00

Respondent Banc of America Investment Services, Inc. is solely liable for:

Member Fees	= \$ 3,550.00
<u>Less payments</u>	<u>= \$ 3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Banc of America Investment Services, Inc., Michael Dennis Degolier and Terry Wayne Johnson are jointly and severally liable for:


Forum Fees	= \$ 2,250.00
<u>Less payments</u>	<u>= \$ 1,650.00</u>
Balance Due NASD Dispute Resolution	= \$ 600.00

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

ARBITRATION PANEL

Andrea U. Calve, JD - Public Arbitrator, Presiding Chairperson
Sanford D. Sanes - Public Arbitrator
Keith L. Saunders - Non-Public Arbitrator

Concurring Arbitrators' Signatures


Andrea U. Calve, JD
Public Arbitrator, Presiding Chairperson

6-8-06
Signature Date

Sanford D. Sanes
Public Arbitrator

Signature Date

Keith L. Saunders
Non-Public Arbitrator

Signature Date

June 12, 2006 Uu
Date of Service (For NASD Dispute Resolution office use only)

Balance Due NASD Dispute Resolution = \$ 1,050.00

Respondent Banc of America Investment Services, Inc. is solely liable for:

Member Fees	= \$ 3,550.00
Less payments	= \$ 3,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents Banc of America Investment Services, Inc., Michael Dennis Degolier and Terry Wayne Johnson are jointly and severally liable for:

Forum Fees	= \$ 2,250.00
Less payments	= \$ 1,650.00
Balance Due NASD Dispute Resolution	= \$ 600.00

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

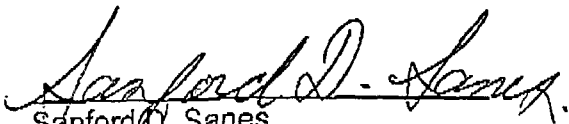
ARBITRATION PANEL

Andrea U. Calve, JD - Public Arbitrator, Presiding Chairperson
Sanford D. Sanes - Public Arbitrator
Keith L. Saunders - Non-Public Arbitrator

Concurring Arbitrators' Signatures

Andrea U. Calve, JD
Public Arbitrator, Presiding Chairperson

Signature Date


Sanford D. Sanes
Public Arbitrator


Signature Date

Keith L. Saunders
Non-Public Arbitrator

Signature Date


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

Balance Due NASD Dispute Resolution = \$ 1,050.00

Respondent Banc of America Investment Services, Inc. is solely liable for:

Member Fees = \$ 3,550.00
Less payments = \$ 3,550.00
Balance Due NASD Dispute Resolution = \$ 0.00

Respondents Banc of America Investment Services, Inc., Michael Dennis Degolier and Terry Wayne Johnson are jointly and severally liable for:

Forum Fees = \$ 2,250.00
Less payments = \$ 1,650.00
Balance Due NASD Dispute Resolution = \$ 600.00

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

ARBITRATION PANEL

Andrea U. Calve, JD - Public Arbitrator, Presiding Chairperson
Sanford D. Sanes - Public Arbitrator
Keith L. Saunders - Non-Public Arbitrator

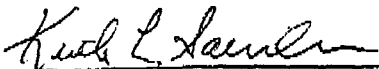
Concurring Arbitrators' Signatures

Andrea U. Calve, JD
Public Arbitrator, Presiding Chairperson

Signature Date

Sanford D. Sanes
Public Arbitrator

Signature Date


Keith L. Saunders
Non-Public Arbitrator

6/8/06
Signature Date

6/12/06 
Date of Service (For NASD Dispute Resolution office use only)