

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:
Jim W. Quinn, Claimant vs. BA Investment Services, Inc., Respondent.

Case Number: 99-01334

Hearing Site: San Francisco, CA

REPRESENTATION OF PARTIES

Claimant, Jim W. Quinn (hereinafter referred to as "Claimants": In Pro Per, 2724 Pigeon Pt Road, Eureka, CA 95503.

Respondent, BA Investment Services, Inc., (hereinafter referred to as "Respondents. Andrea Hackett Henningsen, Esq., Steefel, Levitt & Weiss, One Embarcadero Center, Thirteenth Floor, San Francisco, CA 94612.

CASE INFORMATION

Statement of Claim filed on or about: May 28, 1999
Claimant signed the Uniform Submission Agreement: July 7, 1999
Statement of Answer filed by Respondent on or about: October 7, 1999
Respondent did not sign and submit a Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following: Claimant alleges that Respondent failed to invest his money in the Pacific Horizon Capital Income Fund, a high interest yielding mutual fund. Instead, Respondent placed the money in a low interest yielding money market fund. Claimant sought the earnings that would have been earned had the money been placed in the Pacific Horizon Capital Income Fund.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's claim is barred by the *doctrines of estoppel and ratification*. Claimant's claim is also barred by the applicable statute of limitations. Finally, Claimant's claim should be denied because Claimant failed to mitigate his alleged losses.

RELIEF REQUESTED

Claimant requested:
Compensatory Damages

\$10,000

Punitive Damages
Costs

Unspecified.
Unspecified.

Respondent requested:

Costs
Non-Monetary Relief

Unspecified costs and forum fees.
That the claim be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Before the hearing, Respondent sought to enforce a prior settlement agreement reached with the Claimant. During the hearing, however, Respondent withdrew its motion to enforce.

Respondent did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed Uniform Submission Agreement, but is required as a member of the NASD, to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Arbitrator on all issues submitted

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.

AWARD

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

The Claimant is awarded the sum of Five Thousand Five Hundred and Fifty Seven Dollars (\$5,557.00). This sum is calculated as the amount of money Claimant would have earned between April 1994 when the Claimant's money was placed into a Money Market rather than a Mutual Fund, and December 1997 when the Claimant was notified by Respondent and was advised to remove the money from the Money Market and to place it into a Mutual Fun, less the amount the Claimant received as interest between 1994 and 1997.

Respondent was negligent in failing to transfer Claimant's money from a Money Market to a Mutual Fund. After Claimant was notified in 1997, Claimant was under a duty to mitigate his damages and should not collect for damages suffered past that point.

No punitive damages or attorney's fees will be awarded to either party.

All forum fees shall be assessed to the Respondent.

All other claims are denied in their entirety.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 75

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 person at the time of the events giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$300

Forum Fees and Assessments

The Arbitrator assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator, including a pre-hearing conference with the arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator x \$ 250= \$500

Pre-hearing conferences:	January 26, 2000	1 session
	April 10, 2000	1 session

One (1) Hearing session x \$250 = \$250

<u>Hearing Date</u>	<u>April 25, 2000</u>	<u>1 sessions</u>
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Total Forum Fees = \$750

The Arbitrator has assessed \$750 of the forum fees to Respondent.

Fee Summary

Claimant is hereby solely liable for:

<u>Initial Filing Fee</u>	= \$ 75
<u>Total Fees</u>	= \$ 75
<u>Less payments</u>	= \$575
(Refund)	= \$500

Respondent is hereby solely liable for:

<u>Member Fees</u>	= \$300
<u>Forum Fees</u>	= \$750
<u>Total Fees</u>	= \$1050
<u>Less payments</u>	= \$300
Balance Due NASD Regulation, Inc.	= \$750

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All balances are due to NASD Regulation, Inc. and are payable within 30 days of the service date of this Award.

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Arbitrator's Signature



Andrew E. Tanenbaum, Esq.
Public Arbitrator, Presiding Chair

Date Served:

MAY 17 2000

5/16/2000

Signature Date

Date of Service (For NASD office use only)