

Award
NASD Regulation, Inc.

In the Matter of the Arbitration Between:

**JEFFERY MAKIMAA, CUSTODIAN
FOR KATELYN M. MAKIMAA,**

Claimant

and

NASD Case No. 99-02026

Hearing Site: Detroit, Michigan

**BANC ONE SECURITIES CORPORATION
and CRAIG BIVINS,**

Respondents

REPRESENTATION OF PARTIES

Claimant, Jeffery Makimaa, Custodian For Katelyn M. Makimaa, ("Makimaa") and Party Name ("Name"), hereinafter referred to as "Claimant": Steven F. Spender, Esq. Spender, Robb & Black, Flint, Michigan.

Respondents, Banc One Securities Corporation ("BOSC") and Craig Bivins ("Bivins"), hereinafter collectively referred to as "Respondents": Michael N. Ungar, Esq. and Bernard C. Daley, Esq., Ulmer & Berne, Cleveland, Ohio.

CASE INFORMATION

Statement of Claim filed on or about: May 3, 1999

Claimant signed the Uniform Submission Agreement: April 13, 1999

Statement of Answer filed by Respondents on or about: August 27, 1999

Respondent, Banc One Securities Corporation, signed the Uniform Submission Agreement: July 14, 1999

Respondent, Craig Bivins, signed the Uniform Submission Agreement: August 27, 1999

CASE SUMMARY

This matter involves the purchase of 1,000 shares of Amazon.Com and their unauthorized sale. Claimant alleged that he was specifically told that he could purchase shares without having the full amount of funds in his account so long as the funds were deposited prior to the settlement date. Claimant asserted that he had engaged in numerous transactions where he purchased shares without adequate funds but deposited the funds on or before the settlement date and that these transactions were always approved by Respondent. Claimant averred that on December 16, 1998, - the transaction upon which this Arbitration is based- Claimant purchased 1,000 shares of Amazon.Com through Respondent. Claimant stated that the settlement date of this transaction was December 21, 1998, and that on December 21, 1998, Claimant deposited in his account sufficient funds to cover the transaction. According to Claimant, on the same date as the purchase (December 16, 1998), Respondent sold Claimant's 1,000 shares of Amazon.Com. Claimant asserted that this was done before the settlement date and that Claimant had clearly indicated to Respondent Bivins that Claimant did not authorize the sale of his shares of Amazon.Com.

Unless specifically admitted in their Answer, Respondents, BOSC and Bivins, denied the allegations made in the Statement of Claim and asserted the following defenses: BOSC was required to liquidate Claimant's position pursuant to Reg T; Claimant acknowledged the transaction; BOSC was permitted to liquidate Claimant's position pursuant to state law.

RELIEF REQUESTED

Claimant, Jeffery Makimaa, Custodian For Katelyn M. Makimaa, requested: \$70,250.00 in compensatory damages, plus commissions, costs, interest, and attorney fees.

Respondents Banc One and Bivins requested that judgment be entered in their favor and that Claimant's claims be denied, that the mention of this action be expunged from the CRD of Respondent Bivins, that attorneys' fees and costs incurred in defending this arbitration be awarded to Respondents, and that all forum costs be assessed against Claimant.

OTHER ISSUES CONSIDERED AND DECIDED

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

- 1.) Respondent Banc One Securities Corporation is solely liable for and shall pay to Claimant Jeffery Makimaa, Custodian For Katelyn M. Makimaa, the sum of \$40,000.00 in compensatory damages;
- 2.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Craig Bivins' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Bivins (CRD #22276317) must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 4.) That any relief not specifically enumerated, is hereby denied with prejudice.

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 = \$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 person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,000.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$1,500.00

Adjournment Fees

Adjournments requested during these proceedings: N/A

Forum Fees and Assessments

The 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:

One (1) Pre-hearing session with Panel x \$750.00 = \$ 750.00

Pre-hearing conferences: January 13, 2000 1 session

Two (2) Hearing sessions x \$750.00 = \$1,500.00

Hearing Date: April 18, 2000 2 sessions

Total Forum Fees = \$2,250.00

The Panel has assessed \$1,125.00 of the forum fees to Jeffery Makimaa, Custodian For Katelyn M. Makimaa.

The Panel has assessed \$1,125.00 of the forum fees to Banc One Securities Corporation.

Fee Summary

Claimant, Jeffery Makimaa, Custodian For Katelyn M. Makimaa, be and hereby is solely liable for:

Initial Filing Fee = \$ 225.00

Forum Fees = \$ 1,125.00

Total Fees = \$ 1,350.00

Less payments = \$ 975.00

Balance Due NASD Regulation, Inc. = \$ 375.00

Respondent, Banc One Securities Corporation, be and hereby is solely liable for:

Member Fees	= \$ 3,100.00
<u>Forum Fees</u>	<u>= \$ 1,125.00</u>
Total Fees	= \$ 4,225.00
<u>Less payments</u>	<u>= \$ 3,100.00</u>
Balance Due NASD Regulation, Inc.	= \$ 1,125.00

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

/s/ Roland L. Olzark, J.D.

Roland L. Olzark, J.D.

Public Arbitrator, Presiding Chair

05/03/00

Signature Date

/s/ Paul M. Stoychoff, J.D.

Paul M. Stoychoff, J.D.

Public Arbitrator

05/05/00

Signature Date

/s/ Peter S. Viviano

Peter S. Viviano

Industry Arbitrator

05/09/00

Signature Date

05/12/00

Date of Service (For NASD office use only)

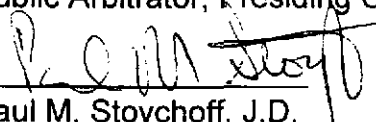
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Public Arbitrator, Presiding Chair



Paul M. Stoychoff, J.D.
Public Arbitrator

Signature Date

5/5/00

Signature Date

Peter S. Viviano
Industry Arbitrator

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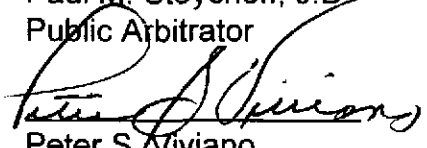
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Public Arbitrator, Presiding Chair

Signature Date

Paul M. Stoychoff, J.D.
Public Arbitrator

Signature Date


Peter S. Viviano
Industry Arbitrator

9-MAY-2000
Signature Date

Date of Service (For NASD office use only)

NASD Regulation, Inc. Office of Dispute Resolution
Arbitration # 99-2026
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Concurring Arbitrators' Signatures



Roland L. Olzark, J.D.
Public Arbitrator, Presiding Chair

5/3/00
Signature Date

Paul M. Stoychoff, J.D.
Public Arbitrator

Signature Date

Peter S. Viviano
Industry Arbitrator

Signature Date

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