

**Award**  
**FINRA Office of Dispute Resolution**

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In the Matter of the Arbitration Between:

Claimants

████████████████████

Case Number: ██████████

vs.

Respondent

Banc of America Investment Services Inc.

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████: Armin Sarabi, Esq., AdvisorLaw, LLC, Broomfield, Colorado.

For Respondent Banc of America Investment Services Inc.: Sarah K. Yates, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: August 1, 2017.

████████████████████ signed the Submission Agreement: August 1, 2017.

Statement of Answer filed by Respondent on or about: September 22, 2017.

Banc of America Investment Services Inc. signed the Submission Agreement: September 22, 2017.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

Respondent did not oppose the request for expungement.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested compensatory damages in the amount of \$1.00, expungement of his CRD records, and any and all relief that the Arbitrator deems just and equitable.

In the Statement of Answer Respondent requested Claimant's expungement request be granted, dismissal of all requested damages, and assessment of all costs and fees against Claimant.

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

The Arbitrator acknowledges that he has read the pleadings and other materials filed by the parties.

The Arbitrator ordered Claimant to provide service of the Statement of Claim and notice of the expungement hearing. By letters dated August 18, 2017, the Claimant served the Statement of Claim to the customers in occurrence #s [REDACTED] and [REDACTED]. By letters dated November 30, 2017, the Claimant provided notice of the expungement hearing to the customers in occurrence #s [REDACTED] and [REDACTED].

The Arbitrator conducted a recorded telephonic hearing on March 1, 2018 so the parties could present oral argument and evidence on [REDACTED] request for expungement. Claimant withdrew his request for compensatory damages at the hearing.

The customers did not participate in the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED] and the settlement documents, considered the amount of payments made to any party, and considered other relevant terms and conditions of the settlement. The Arbitrator noted that the settlement was not conditioned on the customers not opposing the request for expungement. The Arbitrator also noted that [REDACTED] did not contribute to the settlement amount.

The Arbitrator noted that [REDACTED] did not previously file a claim requesting expungement of the same disclosure in the CRD.

In recommending expungement the Arbitrator relied upon the following documentary or other evidence: correspondence and articles provided as exhibits.

### **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:

1. The Arbitrator recommends the expungement of all references to occurrence #'s [REDACTED] and [REDACTED] from registration records maintained by the Central Registration Depository ("CRD"), for [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code, the Arbitrator has made the following Rule 2080 affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and the registered person was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds.

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

**Occurrence # [REDACTED]:**

In this reported matter, the customer alleged [REDACTED] failed to follow his instructions to liquidate all the mutual funds in his account during August, 2008 – a time period that experienced considerable market turmoil. [REDACTED] testified that he received no such instructions from the client; indeed it appeared that the customer's intention was to not liquidate his mutual funds and move them over to an AIG fixed annuity only when his account exceeded \$100,000.00. Due to the market collapse in August 2008, it never did. These instructions were actually repeated by the customer to [REDACTED] at that time. The firm denied the claim, and it was not pursued in arbitration or litigation.

**Occurrence # [REDACTED]:**

In this matter, the customer alleged a loss in auction rate securities (ARS) purchased in 2007. The primary investment objective for his account was income coupled with a moderate risk tolerance and long-term perspective. As a result, he primarily invested in CDs, corporate and municipal bonds and annuities. Based on these preferences, ARS were a viable option at the time of purchase, were highly rated, extremely liquid.

Unfortunately, the ARS market seized up in February 2008 and auctions began to fail, thus rendering them essentially illiquid.

In October of that year, recognizing that any losses on ARS were not due to any lack of due diligence by its financial advisors or client-specific unsuitability, Banc of America reached a global settlement with the U.S. Securities and Exchange Commission pursuant to which the customer's ARS were purchased by the firm for their principal amount, thus making him whole on the investment [REDACTED] did not participate in this overall settlement.

Based on the foregoing, the undersigned finds that [REDACTED] has established the grounds set forth in Rule 2080 (A) and (B) to warrant expungement of the aforementioned occurrences. The allegations made by the customer in occurrence #s were not sustained by the evidence, and were not pursued by the customer after his claim was denied. Similarly, [REDACTED] conduct was not implicated in the industry-wide collapse of the ARS market in 2008. The interest of the investor

protection would not be served by having these occurrences to continue to be on [REDACTED] CRD records.

[REDACTED] testified that he had made no prior application for the relief sought herein. He also testified as to the negative impact these reported incidents have had on his professional career and business development.

### **FEES**

Pursuant to the Code of Arbitration Procedure, the following fees are assessed:

#### **Filing Fees**

FINRA Office of Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim Filing Fee	= \$ 50.00
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*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### **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. Accordingly, as a party, Banc of America Investment Services Inc. is assessed the following:

Member Surcharge	= \$ 150.00
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#### **Hearing Session Fees and Assessments**

The Arbitrator has assessed hearing session fees for each session conducted. A 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:

One (1) pre-hearing session with a single arbitrator @ \$50.00/session	= \$ 50.00
Pre-hearing conference: November 20, 2017	1 session

One (1) hearing session on expungement request @ \$50.00/session	= \$ 50.00
Hearing Date: March 1, 2018	1 session

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Total Hearing Session Fees	= \$100.00
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The Arbitrator has assessed the \$100.00 hearing session fees to Claimant.

All balances are payable to FINRA Office of Dispute Resolution and are due upon receipt.

**ARBITRATOR**

Robert E. Anderson

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Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Arbitrator's Signature**



Robert E. Anderson  
Sole Public Arbitrator

3/26/18

Signature Date

March 27, 2018

Date of Service (For FINRA Office of Dispute Resolution office use only)