

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

---

In the Matter of the Arbitration Between:

Claimant

[REDACTED]

Case Number: [REDACTED]

vs.

Respondent

Banc of America Investment Services, Inc.

Hearing Site: New York, New York

---

Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant [REDACTED]: Dochter Kennedy, AdvisorLaw LLC,  
Westminster, Colorado.

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

**CASE INFORMATION**

Statement of Claim filed on or about: December 21, 2018.

Amended Statement of Claim filed on or about February 7, 2019.

[REDACTED] signed the Submission Agreement: December 20, 2018.

Statement of Answer filed by Respondent on or about: February 19, 2019.

BAIS signed the Submission Agreement: February 19, 2019.

**CASE SUMMARY**

Claimant asserted the following cause of action: expungement.

Respondent took no position on Claimant's request for expungement and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested expungement of Occurrence Number [REDACTED] from the registration records maintained by the Central Registration Depository ("CRD"), compensatory damages in the amount of \$1.00, and any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent requested that Claimant's claim for \$1.00 in compensatory damages be denied.

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

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

Claimant provided FINRA Office of Dispute Resolution with proof that the customer related to Occurrence Number [REDACTED] was notified of the expungement request and of their right to participate and testify at the expungement hearing. The customer was served a copy of the Statement of Claim with the notice.

The Arbitrator conducted a recorded telephonic hearing on June 20, 2019 so the parties could present oral argument and evidence on [REDACTED] request for expungement.

Respondent BAIS did not contest the request for expungement. The customer did not appear at the expungement hearing and did not contest the request for expungement.

The Arbitrator reviewed the BrokerCheck® Report for [REDACTED].

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: all pleadings, party submissions, Claimant's BrokerCheck® Report, and Claimant's testimony.

The parties present at the hearing 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, and 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 Occurrence Number 1469019 from registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED] with the understanding that, pursuant to Notice to Members 04-16, Claimant [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 finding of fact:

The claim, allegation, or information is factually impossible or clearly erroneous.

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

The underlying customer dispute involves the collapse of the Auction Rate Securities (“ARS”) marketplace beginning in 2008, and the recommendation of these investments to the customer. According to the Claimant’s testimony, the customer was also employed by Respondent BAIS in a different division. The customer was thoroughly trained on ARS and may have also recommended the ARS to her commercial clients. As such, the customer understood the ARS marketplace and the risks involved. The Arbitrator concluded the claim is clearly erroneous.

In recommending expungement, the Arbitrator relied primarily on the testimony of the Claimant and on the Claimant’s responses to the Arbitrator’s questions. Counsel for the Respondent validated that the customer’s investment in the “failed” auction rate securities had been repurchased by Respondent. The Arbitrator notes the “settlement” was actually a repurchase by Respondent of the customer’s investment in the ARS. The Arbitrator notes neither party could produce written documentation of the settlement. However, counsel for Respondent verified that the repurchase occurred in 2009. The Arbitrator notes the Claimant did not contribute to the repurchase.

2. Claimant’s request for compensatory damages is denied.
3. Any and all claims for relief not specifically addressed herein, including attorneys’ fees, are denied.

## 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
--------------------------	-----------

*\*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, Respondent Banc of America Investment Services, Inc. is assessed the following:

Member Surcharge	=\$ 150.00
------------------	------------

### 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: May 7, 2019	1 session

One (1) hearing session @ \$ 50.00/session	=\$ 50.00
Hearing Date: June 20, 2019	1 session

---

Total Hearing Session Fees	=\$ 100.00
----------------------------	------------

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**

Richard A. Cini

-

Sole Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

**Arbitrator's Signature**



**7/21/2019**

---

Richard A. Cini  
Sole Non-Public Arbitrator

---

Signature Date

**July 22, 2019**

---

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