

**AWARD
FINRA Dispute Resolution**

In the Matter of the Arbitration Between:

Claimants:

Case Number: 07-00446

Rock Mirich
Brent Cowin

Respondents:

Hearing Site: Las Vegas, Nevada

Lisa Dry, Bank of America,
Banc of America Investment Services, Inc.
Julie G. Castle, Mary P. With, William K. Tanem,
David M. Winchell, Jeffrey A. Graves, Matthew J. Howard,
Pat Jagielski, and Keith A. Schmidt

Counter-Claimant:

Banc of America Investment Services, Inc.

Counter-Respondents:

Rock Mirich
Brent Cowin

Nature of the Dispute: Associated Persons v. Associated Persons, Non-Members
and Member
Member v. Associated Persons

REPRESENTATION OF PARTIES

Claimants/Counter-Respondents, Rock Mirich and Brent Cowin, hereinafter collectively referred to as "Claimants": Marie Mirch, Esq., Mirch & Mirch, Reno, Nevada

Respondents/Counter-Claimant, Lisa Dry, Bank of America ("B of A"), Banc of America Investment Services, Inc. ("BAIS"), Julie G. Castle, Mary P. With, William K. Tanem, David M. Winchell, Jeffrey A. Graves, Matthew J. Howard, Pat Jagielski, and Keith A. Schmidt, hereinafter collectively referred to as "Respondents": Bryce K. Kunimoto, Esq. and Patrick Reilly, Esq., Hale Lane, Las Vegas, Nevada

CASE INFORMATION

Statement of Claim filed on or about: February 12, 2007

Claimant, Rock Mirich, signed the Uniform Submission Agreement: February 2, 2007

Claimant, Brent Cowin, signed the Uniform Submission Agreement: February 2, 2007

Joint Statement of Answer filed by Respondents, Lisa Dry, B of A, BAIS, Julie G. Castle, Mary P. With, William K. Tanem, David M. Winchell, Jeffrey A. Graves, Matthew J. Howard, Pat Jagielski, and Keith A. Schmidt, on or about: June 25, 2007

Counterclaim filed by Respondent, BAIS, on or about: June 25, 2007

Respondents' Motion to Dismiss, or, in the Alternative, for Summary Judgment; Motion to Strike, filed on or about: May 30, 2007

Respondents' Reply in Support of Motion to Dismiss, or, in the Alternative, for Summary Judgment; Reply in Support of Motion to Strike, filed on or about: August 6, 2007

Respondent, Lisa Dry, signed the Uniform Submission Agreement: April 23, 2007

Respondent, B of A, signed the Uniform Submission Agreement: June 14, 2007

Respondent, BAIS, signed the Uniform Submission Agreement: June 18, 2007

Respondent, Julie G. Castle, signed the Uniform Submission Agreement: May 30, 2007

Respondent, Mary P. With, signed the Uniform Submission Agreement: May 24, 2007

Respondent, William K. Tanem, signed the Uniform Submission Agreement: April 24, 2007

Respondent, David M. Winchell, signed the Uniform Submission Agreement: April 24, 2007

Respondent, Jeffrey A. Graves, signed the Uniform Submission Agreement: May 30, 2007

Respondent, Matthew J. Howard, signed the Uniform Submission Agreement: June 21, 2007

Respondent, Pat Jagielski, signed the Uniform Submission Agreement: May 23, 2007

Respondent, Keith A. Schmidt, signed the Uniform Submission Agreement: June 15, 2007

Claimants' Answer to Respondent BAIS' Counterclaim filed on or about: July 11, 2007

Claimants' Opposition to Respondents' Motion to Dismiss, or, in the Alternative, for Summary Judgment; Motion to Strike, filed on or about: June 29, 2007

Claimants' Arbitration Statement filed on or about: March 4, 2008

CASE SUMMARY

Claimants alleged the following claims with respect to their employment with B of A/BAIS: 1) Breach of Contract - B of A/BAIS – Mirich & Cowin; 2) Breach of Covenant of Good Faith and Fair Dealing – Against B of A/BAIS; 3) Negligence – All Respondents; 4) Intentional Interference with Present Contractual Relationships – All Respondents; 5)) Intentional Interference with Prospective Business Relationships – All Respondents; 6) Fraudulent Misrepresentation – All Respondents; 7) Negligent Misrepresentation – All Respondents; 8) Defamation – Libel and Slander – All Respondents; 9) Wrongful Termination – All Respondents; 10) Whistle Blower Claim – All Respondents; and 11) Conspiracy.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In its Counterclaim, BAIS alleged that Claimants charged excessive fees on transactions conducted on behalf of BAIS client, 70 Limited Partnership, LLC ("70 Limited") and alleged that it paid \$837,980.34 to 70 Limited in settlement of this issue in October of 2005. BAIS also alleged the following claims: 1) Indemnification; and 2) Unjust Enrichment.

Unless specifically admitted in their Answer, Claimants denied the allegations made in BAIS' Counterclaim and asserted various affirmative defenses

RELIEF REQUESTED

In the Statement of Claim, Claimants requested:

1. That Respondents be ordered to pay to Claimants a sum in excess of \$10,000,000.00, the exact amount of which will be proven at the time of trial;
2. That Respondents be ordered to pay to Claimants a sum, the exact amount of which will be proven at the time of trial, for Claimants' lost earnings, both past and future;
3. That Respondents be ordered to pay Claimants a sum in excess of

- \$10,000,000.00, the exact amount of which will be proven at the time of trial, for Claimants' physical and mental pain, and for Claimants' personal property damage;
4. That Claimants be awarded exemplary damages, as permitted by law, as a result of Respondents willful and wanton misconduct in a sum in excess of \$10,000,000.00;
 5. That Claimants be awarded the attorney's fees and costs that Claimants incurred in the prosecution of this Complaint; and
 6. Respondents be ordered to correct the false U-4 and to provide a letter that apologizes for false statements made about Messrs. Mirich and Cowin that can be provided to their customers; and
 7. Such other and further relief as the Panel may deem just and equitable in the premises.

At the close of the hearing, Claimants requested total damages in excess of \$42,000,000.00 which includes the original claim request for punitive damages.

In the Counterclaim, Respondent BAIS requested:

1. That BAIS be awarded \$837,980.34 as and for indemnification with respect to the payment to 70 Limited;
2. That BAIS be awarded damages for the excessive compensation to Claimants in an amount to be proven at trial, but in excess of \$300,000.00;
3. That BAIS be awarded pre-judgment and post-judgment interest on these amounts;
4. That BAIS be awarded its reasonable attorneys' fees and costs in pursuing its claims; and
5. That BAIS be awarded such other and further relief as to the Panel appears just and reasonable.

Claimants requested the following relief with respect to BAIS' Counterclaim:

1. That nothing be taken by Respondent/Counter-Claimant's Counterclaim;
2. That costs and attorney fees be awarded against the Respondent/Counter-Claimant; and
3. That Claimants be awarded damages as set forth in Claimants'/Counter-Respondents' complaint, or subsequently amended claims for relief.

At the close of the hearing, Respondent BAIS amended its claim from a damage claim to an offset claim.

OTHER ISSUES CONSIDERED AND DECIDED

On or about November 16, 2007, the Panel reviewed and considered the positions of the parties relative to Respondents' Motion to Dismiss, or, in the Alternative, for

Summary Judgment; Motion to Strike. The Panel denied the Motions.

On or about June 18, 2008, the Panel reviewed and considered the positions of the parties relative to Claimants' Motion to Change Venue, dated June 9, 2008. The Panel denied Claimants' Motion.

During the hearing, the parties confirmed that Respondent Lisa Dry was incorrectly named as Lisa Dry Aniskovich, that David M. Winchell was incorrectly named as David Wenchel, that Jeffrey A. Graves was incorrectly named as Jeff Grave, that Pat Jagielski was incorrectly named as Pat Jakiewski, and that Keith A. Schmidt was incorrectly named as Kieth Schmidt.

Respondents made a motion for dismissal at the close of Claimants' case. The Panel dismissed Claimants' claims against Respondents Julie G. Castle, Mary P. With, William K. Tanem, Jeffrey A. Graves, Pat Jagielski and Keith A. Schmidt. The Motion was otherwise denied.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1) The Panel read and listened to all the evidence submitted during the case, and oral arguments made during the expungement testimony for both Brent Cowin and Rock Mirich.**

The Panel determined that the language in the U-5 and the Central Registration Depository ("CRD") system for Brent Cowin and Rock Mirich was of defamatory nature; specifically all of Number 3 on the U-5's; reason for termination; typed on the forms by the BAIS, and in addition specifically all of Part 1 Number 3 of the Internal Review Section typed on the U-5 forms by BAIS, all of which the Panel found to be of defamatory nature on both the U-5's, and in the CRD system.

In addition, the Panel is directing and ordering the Respondents to change 7B. on both Claimants' U-5's from a Yes marking to a No marking.

The Panel has ruled and is directing, as an order, that BAIS amend Brent Cowin's and Rock Mirich's forms U-5 to expunge the specific sections referenced in the aforementioned two paragraphs, and that the CRD system expunge the specific

sections referenced in the aforementioned two paragraphs based on the defamatory nature of the information in the CRD system.

After hearing all oral testimony and reading the written pleading regarding the issue of expungement of both Rock Mirich and Brent Cowin, the Panel found the language contained in the specific paragraphs of both Claimants' U-5 and the CRD system; all of Number 3 on both U-5's; reason for termination; typed on these forms by BAIS, and in addition specifically all of Part 1 Number 3 of the Internal Review Section typed on the U-5 forms by the BAIS to be false and found to be of defamatory nature, and the information on CRD system to be defamatory in nature.

- 2) Respondent BAIS is solely liable to and shall pay Claimant Rock Mirich the sum of \$800,000.00.
- 3) Respondent BAIS is solely liable to and shall pay Claimant Rock Mirich interest on the aforementioned sum of \$800,000.00 at the rate of 5% per annum from the date of service of this Award until payment in full is made.
- 4) Respondent BAIS is solely liable to and shall pay Claimant Brent Cowin the sum of \$400,000.00.
- 5) Respondent BAIS is solely liable to and shall pay Claimant Brent Cowin interest on the aforementioned sum of \$400,000.00 at the rate of 5% per annum from the date of service of this Award until payment in full is made.
- 6) Respondent Lisa Dry is solely liable to and shall pay Claimant Rock Mirich the sum of \$5,000.00.
- 7) Respondent Lisa Dry is solely liable to and shall pay Claimant Rock Mirich interest on the aforementioned sum of \$5,000.00 at the rate of 5% per annum from the date of service of this Award until payment in full is made.
- 8) Respondent Lisa Dry is solely liable to and shall pay Claimant Brent Cowin the sum of \$5,000.00.
- 9) Respondent Lisa Dry is solely liable to and shall pay Claimant Brent Cowin interest on the aforementioned sum of \$5,000.00 at the rate of 5% per annum from the date of service of this Award until payment in full is made.
- 10) Respondent David M. Winchell is solely liable to and shall pay Claimant Rock Mirich the sum of \$5,000.00.
- 11) Respondent David M. Winchell is solely liable to and shall pay Claimant Rock Mirich

- interest on the aforementioned sum of \$5,000.00 at the rate of 5% per annum from the date of service of this Award until payment in full is made.
- 12) Respondent David M. Winchell is solely liable to and shall pay Claimant Brent Cowin the sum of \$5,000.00.
- 13) Respondent David M. Winchell is solely liable to and shall pay Claimant Brent Cowin interest on the aforementioned sum of \$5,000.00 at the rate of 5% per annum from the date of service of this Award until payment in full is made.
- 14) Respondent Matthew J. Howard is solely liable to and shall pay Claimant Rock Mirich the sum of \$10,000.00.
- 15) Respondent Matthew J. Howard is solely liable to and shall pay Claimant Rock Mirich interest on the aforementioned sum of \$10,000.00 at the rate of 5% per annum from the date of service of this Award until payment in full is made.
- 16) Respondent Matthew J. Howard is solely liable to and shall pay Claimant Brent Cowin the sum of \$10,000.00.
- 17) Respondent Matthew J. Howard is solely liable to and shall pay Claimant Brent Cowin interest on the aforementioned sum of \$10,000.00 at the rate of 5% per annum from the date of service of this Award until payment in full is made.
- 18) Claimants' claims against B of A are dismissed.
- 19) All claims with respect to BAIS' Counterclaim are dismissed.
- 20) Any and all relief not specifically addressed herein, including punitive and exemplary damages, is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 600.00
Counterclaim filing fee	= \$ 2,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, BAIS is a party.

Member Surcharge	= \$ 3,750.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,500.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on either a discovery-related motion on the papers or a contested motion for the issuance of a subpoena. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

(2) Decisions on discovery-related motions on the papers with (3) arbitrators @ \$600.00/decision = \$1,200.00
Claimants submitted one (1) discovery-related motion
Respondents submitted one (1) discovery-related motion

(1) Decision on a contested motion for the issuance of a subpoena with (1) arbitrator @ \$200.00 = \$200.00
Claimants submitted a motion for the issuance of a subpoena

(5) Pre-hearing sessions with Panel @ \$1,200.00/session = \$6,000.00
Pre-hearing conferences: August 1, 2007 1 session
March 3, 2008 1 session
March 6, 2008 1 session
March 11, 2008 1 session
May 20, 2008 1 session

(22) Hearing sessions @ \$1,200.00/session = \$26,400.00
Hearing Dates: March 17, 2008 2 sessions
March 18, 2008 2 sessions
March 19, 2008 2 sessions
March 20, 2008 2 sessions
March 21, 2008 2 sessions
July 7, 2008 2 sessions
July 8, 2008 2 sessions
July 9, 2008 2 sessions
July 10, 2008 2 sessions
July 14, 2008 2 sessions

July 15, 2008 2 sessions

Total Forum Fees = \$33,800.00

1. The Panel has assessed \$32,600.00 of the forum fees to Respondent, BAIS.
2. The Panel has waived \$1,200.00 of the forum fees.

ARBITRATION PANEL

David W. Dresnick	-	Public Arbitrator, Presiding Chair
Paul E. Dahlman	-	Public Arbitrator
Geoffrey A. VanderPal, CFP	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Paul E. Dahlman
Public Arbitrator

Signature Date

Geoffrey A. VanderPal, CFP
Non-Public Arbitrator

Signature Date

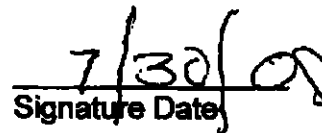
Chairperson, David W. Dresnick believes an investigation was conducted by Respondents regarding 7B. of both Claimants U-5's, although in the Chair's view it was inadequate, and not thorough.

Chairperson, David W. Dresnick is in the minority with the majority of the Panel regarding both the Corporate and personal monetary awards levied on certain Respondents, not as to ordering a monetary award for both Claimants, but rather believes they should be of lesser amounts.

Concurring in Part and Dissenting in Part Arbitrator's Signature



David W. Dresnick
Chair, Public Arbitrator


Signature Date

July 31, 2008

Date of Service (For FINRA Dispute Resolution use only)

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David W. Dresnick	-	Public Arbitrator, Presiding Chair
Paul E. Dahlman	-	Public Arbitrator
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07/31/2008

Paul E. Dahlman
Public Arbitrator

Signature Date

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Paul E. Dahlman
Public Arbitrator

Signature Date



Geoffrey A. VanderPal, CFP
Non-Public Arbitrator

7/31/08
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