

**Award**  
**FINRA Dispute Resolution Services**

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In the Matter of the Arbitration Between:

Claimant  
Brice Redmond

Case Number: 20-03011

vs.

Respondent  
Banc of America Investment Services Inc.

Hearing Site: Los Angeles, California

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Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant Brice Redmond (“Claimant”): Erika C. Binnix, Esq., HLBS Law, Westminster, Colorado.

For Respondent Banc of America Investment Services Inc. (“Respondent”): Patrick J. Mulligan, Esq., Bressler, Amery & Ross, P.C., Birmingham, Alabama.

**CASE INFORMATION**

Statement of Claim filed on or about: September 4, 2020.  
Claimant signed the Submission Agreement: September 4, 2020.

Statement of Answer filed on or about: November 3, 2020.  
Respondent signed the Submission Agreement: November 3, 2020.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted a claim seeking expungement of customer dispute information from registration records maintained by the Central Registration Depository (“CRD”).

In the Statement of Answer, Respondent took no position on Claimant’s expungement request and asserted various affirmative defenses.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of Occurrence Number 1387750 from Claimant's CRD records pursuant to FINRA Rule 2080, as:
  - a. the claim, allegation, or information is factually impossible or clearly erroneous; and/or
  - b. Claimant was not involved in the alleged investment-related sales practice violation, forgery, theft, misappropriation, or conversion of funds; and/or
  - c. the claim, allegation, or information is false;
2. Compensatory damages in the amount of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent did not set forth a specific relief request.

At the hearing, Claimant withdrew the request for \$1.00 in damages.

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

The Arbitrator acknowledges having read the pleadings and other materials filed by the parties.

On May 19, 2021, Claimant advised that the customers in Occurrence Number 1387750 ("Customers") were served with the Statement of Claim and notice of the date and time of the expungement hearing. On May 24, 2021, Claimant filed an Affidavit confirming that the Customers were served with the Statement of Claim and notice of the date and time of the expungement hearing.

The Arbitrator conducted a recorded, telephonic hearing on June 29, 2021, so the parties could present oral argument and evidence on Claimant's request for expungement.

Respondent did not participate in the expungement hearing.

The Customers did not participate in the expungement hearing. The Arbitrator found that the Customers had notice of the expungement request and hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report. The Arbitrator noted that a prior arbitration panel or court did not previously rule on expungement of the same occurrence in the CRD.

The Arbitrator was unable to review the settlement documentation related to Occurrence Number 1387750. On June 9, 2021, Claimant filed a notice outlining the efforts taken to obtain the settlement agreement. Despite diligent search, neither Claimant nor Respondent could locate the documents due to the age of the complaint. Having reviewed Claimant's BrokerCheck® Report and heard Claimant's testimony, the Arbitrator considered the settlement amount and noted that Claimant did not contribute to the settlement amount. The Arbitrator also noted that the date of the settlement preceded the effective date of the rule against conditioned settlements.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: the Statement of Claim, Claimant's BrokerCheck® Report, the Statement of Answer, and testimony provided by Claimant at the expungement hearing.

## **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, and any post-hearing submissions, 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 Number 1387750 from registration records maintained by the CRD for Claimant Brice Redmond (CRD Number 4923434) with the understanding that, pursuant to Notice to Members 04-16, Claimant Brice Redmond 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 of Arbitration Procedure (“Code”), the Arbitrator has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

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

The evidence indicates this claim is false. The complaint on the BrokerCheck® Report alleges lack of suitability and failure to disclose. The subject investment was a closed-end real estate investment vehicle which was suitable, as it represented a small portion of the Customers’ portfolio, provided a dividend stream and diversification into the real estate sector. All of this consistent with the Customers’ goals, objectives and risk tolerance. Disclosure was made by Claimant when the investment was recommended and Claimant personally handed the Customers a prospectus. Although the matter was settled by Respondent, Claimant was not a named party and did not participate in the settlement.

Claimant credibly testified that he learned of and received affirmation of the Customers’ goals and objectives through personal conversation and regular updates. The Customers were knowledgeable based on their prior investment experience and Claimant learned that one of the Customers held a series 6 license. Claimant testified that he recommended the AWP and it was suitable as it provided diversification, an income stream, and represented an appropriate portion of the investment portfolio. The underlying claim was filed in late January 2008 – Claimant credibly testified that this real-estate investment vehicle suffered a decline in value as a result of the widely-known collapse/decline in the real estate market that started in late 2007. That decline, which was unforeseen when the recommendation was made, likely motivated the Customers to seek recovery. Claimant was not a party to the settlement and has no personal knowledge – according to documents submitted in the case file that Respondent confirmed it does not have the settlement documents. In the Answer, Respondent confirmed that Claimant did not contribute to the settlement.

Claimant testified that the conversations he had with the Customers over the period of the investment was held corroborated that the Customers understood the investment. Claimant never spoke to the Customers about the complaint and had no further contact after the complaint was lodged.

The Arbitrator noted that from late 2008 to 2015, Claimant was not in the securities industry, but was involved in his family's business. Thus, he did not seek expungement in the time period closer to the underlying facts and circumstances when documents may have been more readily available.

2. Any and all claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

FINRA Dispute Resolution Services 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 event giving rise to the dispute. Accordingly, as a party, Respondent is assessed the following:

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

#### **Postponement Fees**

Postponements granted during these proceedings for which fees were assessed or waived:

|                                                   |      |        |
|---------------------------------------------------|------|--------|
| April 14, 2021, postponement requested by parties | = \$ | Waived |
|---------------------------------------------------|------|--------|

#### **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, which lasts four (4) hours or less. Fees associated with these proceedings are:

|                                                                                                                   |      |           |
|-------------------------------------------------------------------------------------------------------------------|------|-----------|
| One (1) pre-hearing session with a single Arbitrator @ \$50.00/session<br>Pre-Hearing Conference: January 8, 2021 | = \$ | 50.00     |
|                                                                                                                   |      | 1 session |

|                                                                                            |      |           |
|--------------------------------------------------------------------------------------------|------|-----------|
| One (1) hearing session on expungement request @ \$50.00/session<br>Hearing: June 29, 2021 | = \$ | 50.00     |
|                                                                                            |      | 1 session |

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

The Arbitrator has assessed the total hearing session fees to Claimant.

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

**ARBITRATOR**

Andrew M. Mintzer

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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**

***Andrew M. Mintzer***

Andrew M. Mintzer  
Sole Public Arbitrator

**07/02/2021**

Signature Date

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July 06, 2021

Date of Service (For FINRA Dispute Resolution Services use only)