

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between

Name of Claimant

Banc of America Investment Services, Inc.

Case No. 00-04838

Names of Respondents

Nancy Harris Persons
Mary Long Denton
Wachovia Securities, Inc.

In the Matter of the Arbitration Between

Names of Claimants

Nancy Harris Persons
Mary Long Denton

Consolidated with
Case No. 00-4952

Name of Respondent

Banc of America Investment Services, Inc.

REPRESENTATION OF PARTIES

For Banc of America Investment Services, Inc., ("Banc of America") hereinafter referred to as "Claimant": David F. Walbert, Esq. and David C. Ates, Esq. of Parks, Chesin, Walbert & Miller, P.C., Atlanta, Georgia.

For Wachovia Securities, Inc. ("Wachovia"), Nancy Harris Persons ("Persons") and Mary Long Denton ("Denton"), hereinafter referred to as "Respondents": Steven L. Manchel, Esq., Michael G. Donovan, Esq. and Richard J. Maloney, Esq. of Manchel & Associates, Newton, Massachusetts.

CASE INFORMATION

Statement of Claim in Case # 00-4838 filed on or about: October 31, 2000.

Response of Banc of America Investment Services, Inc. in Opposition to Denton/Person's Statement of Claim and Application for Immediate Injunctive Order filed on or about: November 14, 2000.

Bank of America's Answer to Respondents' Statement of Claim and Counterclaim filed on or about: December 18, 2000.

Bank of America signed Uniform Submission Agreements on: October 27, 2000 and November 14, 2000.

Statement of Claim and Application for Immediate Injunctive Order filed in Case # 00-4952 on or about: November 8, 2000.

Order of the United States District Court for the Middle District of Georgia, Macon Division filed on or about: November 8, 2000.

Persons' and Denton's Motion for Injunctive Relief filed on or about: November 8, 2000.

Persons' and Denton's Memorandum in Support of Motion for Injunctive Relief filed on or about: November 8, 2000.

Answer and Counterclaims of Nancy Harris Persons, Mary Long Denton and Wachovia Securities, Inc. to Statement of Claim of Banc of America Investment Services, Inc. filed on or about: December 6, 2000.

Persons and Denton signed the Uniform Submission Agreement: November 8, 2000.

Wachovia did not file an executed Uniform Submission Agreement.

CASE SUMMARY

Claimant Banc of America asserted the following: On October 20, 2000, at approximately 4:00 P.M., Respondents Denton and Persons resigned from their positions with Claimant suddenly, voluntarily, and without notice to Claimant. Sometime before their resignations from Claimant, Respondents Denton and Persons accepted positions with Respondent Wachovia, a direct competitor of Claimant.

Prior to their resignations from Claimant, Respondents Denton and Persons began engaging in a course of conduct in direct violation of non-solicitation and confidentiality agreements they made with Claimant. Further, Respondent Wachovia conspired with and assisted Respondents Denton and Persons in connection with this illegal conduct. Specifically, prior to leaving Claimant, Respondents Denton and Persons provided confidential information concerning Claimant's clients and client lists to Respondent Wachovia. This confidential information included client names, addresses, social security numbers, private account numbers and holding pages (the specific equities held by each client of Claimant and the total amount of money invested).

Respondents Denton, Persons and Wachovia then began utilizing this confidential information to solicit Claimant's clients to transfer their accounts from Claimant to Respondent Wachovia. In fact, on the very day that Respondents Denton and Persons submitted their resignations, a solicitation packet went out to Claimant's customers which included the addresses, social security numbers and account numbers of Claimant's clients. The details of the solicitation sent by Respondents to Claimant's clients proves not only Respondents' violations of Claimant's rights, but that Respondents Denton and Persons, while still

employees of Claimant, were acting in furtherance of Respondent Wachovia's interest. Not only did Respondents steal this information from Claimant, they necessarily had to be working on their tortuous lift of Claimant's confidential information while Respondents Denton and Persons were still employed by, and paid by, Claimant.

Respondents' conduct referenced above constituted a breach of contract, misappropriation of trade secrets in violation of the Georgia Trade Secrets Act of 1990, conversion of Claimant's valuable and confidential property, unfair competition, conspiracy to breach the contract, and a breach by Respondents Denton and Persons of their fiduciary duties owed to Claimant.

Unless specifically admitted in their pleadings, Respondents Wachovia, Persons and Denton denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant's contract-based claims should be dismissed because Claimant's Code of Conduct is an employee manual that does not constitute a contract under Georgia law and because the confidentiality and non-solicitation provisions of the Code of Conduct are overbroad and unenforceable under Georgia law. Respondents further asserted that Claimant waived its right to enforce the Code of Conduct against Persons because Claimant expressly agreed, in writing, that the non-solicitation provisions of the Code of Conduct would not apply to the majority of Persons' clients (the "Waiver Agreement"). Finally, Respondents asserted that their transition to Wachovia was not unlawful because it was conducted in accordance with standard securities industry practices, as well as Claimant's own practices, and because the client information at issue does not constitute a trade secret under Georgia law and/or was not wrongfully disclosed in violation of Georgia law.

In addition, Respondents Wachovia, Denton and Persons asserted the following causes of action against Claimant: wrongful injunction, breach of contract, misrepresentation, promissory estoppel, unjust enrichment, tortious interference with business relations, abuse of process and violation of NASD Code Section 2110. Respondents Denton, Persons and Wachovia alleged that Claimant wrongfully sought, obtained and enforced an injunction for the unlawful purpose of interfering with the clients' right to choose to transfer their accounts, with Respondents Denton and Person's client relationships, and with the transition to Wachovia.

RELIEF REQUESTED

Claimant requested that the arbitration panel enter a permanent injunction restraining and enjoining Respondents, and all persons acting in concert with Respondents from directly or indirectly:

1. Soliciting any business from any client or customer whom Respondents Denton and Persons served during their employment with Claimant or its predecessor entities, or any other customer or client of Claimant whose name became known to Respondents Denton and Persons while an employee of Claimant or its predecessor;
2. Using, publishing, or transferring lists of records of clients or accounts to any person

outside of Claimant;

3. Acting on a request of those already solicited to transfer accounts to Wachovia or Respondents Denton and Persons individually;
4. Otherwise, accepting any business or account transfers from any of said customers or clients;
5. Using, disclosing or transmitting for any purposes any information Respondents have obtained from the records of Claimant, including, but not limited to, the names, addresses, and financial information of said clients; and,
6. Requiring Respondents to return to Claimant immediately all originals, copies, or other reproductions, in any form whatsoever, of any record of Claimant, and to purge or destroy any computerized record of Claimant that is within Respondents' possession, custody or control.

Further, Claimant requested that Respondents' claims be dismissed; that the Panel award Claimant all costs and expenses incurred in connection with this action, including Claimant's reasonable attorney's fees; grant Claimant an appropriate award of compensatory damages plus interest, award Claimant an appropriate amount of punitive damages; and, grant Claimant such further and additional relief as the Panel deemed just and proper.

Respondents requested a dismissal of Claimant's claims and compensatory damages representing their lost production from the date of the issuance of the Order of Wilbur D. Owens, Jr., United States District Judge, United States District Court for the Middle District of Georgia, Macon Division, through the date of the hearing plus interest. Further, Respondents requested attorneys' fees, costs, multiple and/or punitive damages, in an amount to be determined by the Panel, for loss of reputation and for wrongful injunction and such other relief as the Panel deemed appropriate. Respondents Persons and Denton, in their Statement of Claim, further requested immediate injunctive relief and restitution.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Wachovia did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure (the "Code") and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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 (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

All claims asserted by all parties in NASD Arbitration Number 00-4838 are denied.

All claims asserted by all parties in NASD Arbitration Number 00-4952 are denied.

All other requests for relief not specifically addressed herein are denied.

The panel notes that by its terms the preliminary injunction issued by Wilbur D. Owens, Jr., United States District Judge, United States District Court for the Middle District of Georgia, on November 3, 2000 and amended on November 14, 2000, expires on the date of this Award.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee 00-4838 (Banc of America)

= \$500.00

Initial claim filing fee 00-4952 (Persons and Denton)

= \$250.00

Counterclaim filing fee 00-4838 (Denton, Persons and Wachovia)

= \$500.00

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. In this matter, the member firms are parties.

Member surcharge = \$1,200.00

Pre-hearing process fee = \$600.00

Hearing process fee = \$2,000.00

Adjournment Fees

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

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 Pre-hearing session with a single arbitrator x \$450.00 = \$450.00

Pre-hearing conference: December 28, 2000 1 session

Two Pre-hearing sessions with Panel x \$1,000.00	= \$2,000.00
Pre-hearing conferences: November 22, 2000	1 session
December 29, 2000	1 session
Six Hearing sessions x \$1,000.00	= \$6,000.00
Hearing Dates: January 2, 2001	2 sessions
January 3, 2001	2 sessions
<u>January 4, 2001</u>	<u>2 sessions</u>
Total Forum Fees	= \$8,450.00

The Panel has assessed \$4,225.00 of the forum fees to Claimant.
The Panel has assessed \$4,225.00 of the forum fees jointly and severally to Respondents.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$500.00
Injunctive Relief Surcharge	= \$2,500.00
Member Fees	= \$5,000.00
Forum Fees	= \$4,225.00
Total Fees	= \$12,225.00
<u>Less payments</u>	<u>= \$8,700.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$3,525.00

Respondent Wachovia be and hereby is solely liable for:

Member Fees	= \$3,800.00
Total Fees	= \$3,800.00
<u>Less payments</u>	<u>= \$3,800.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

Respondents Denton, Persons and Wachovia be and hereby are jointly and severally liable for:

Counterclaim Filing Fee	= \$500.00
Forum Fees	= \$4,225.00
Total Fees	= \$4,725.00
<u>Less payments</u>	<u>= \$2,750.00</u>

Balance Due NASD Dispute Resolution, Inc. = \$1,975.00

Respondents Denton and Persons be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$250.00
Injunctive Relief Surcharge	= \$2,500.00
Total Fees	= \$2,750.00
<u>Less payments</u>	<u>= \$2,750.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures

/s/
Jule B. Greene, Esq.
Public Arbitrator, Presiding Chair

Signature Date

/s/
J. Coleman Budd
Industry Arbitrator

Signature Date
J. Coleman Budd
Industry Arbitrator

/s/
Peter J. Towle, Esq.
Public Arbitrator

Signature Date
Peter J. Towle, Esq.
Public Arbitrator

January 17, 2001
Date of Service (For NASD-DR office use only)

Balance Due NASD Dispute Resolution, Inc. = \$1,975.00

Respondents Denton and Persons be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$250.00
Infunctive Relief Surcharge	= \$2,500.00
Total Fees	= \$2,750.00
Less payments	= \$2,750.00
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures


Julie B. Greene, Esq.
Public Arbitrator, Presiding Chair

01/16/01
Signature Date

J. Coleman Budd
Industry Arbitrator

Signature Date

Peter J. Towle, Esq.
Public Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

Date of Service (For NASD-DR office use only)

Balance Due NASD Dispute Resolution, Inc. = \$1,975.00

Respondents Denton and Persons be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$250.00
Injunctive Relief Surcharge	= \$2,500.00
Total Fees	= \$2,750.00
Less payments	= \$2,750.00
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures

Julie B. Greene, Esq.
Public Arbitrator, Presiding Chair

J. Coleman Budd
J. Coleman Budd
Industry Arbitrator

Peter J. Towle, Esq.
Public Arbitrator

Signature Date

1-16-01
J. Coleman Budd
J. Coleman Budd
Industry Arbitrator

Signature Date Peter J. Towle, Esq.
Public Arbitrator

Date of Service (For NASD-DR office use only)

Balance Due NASD Dispute Resolution, Inc. = \$1,975.00

Respondents Denton and Persons be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$250.00
Injunctive Relief Surcharge	= \$2,500.00
Total Fees	= \$2,750.00
Less payments	= \$2,750.00
Balance Due NASD Dispute Resolution, Inc.	= \$0.00

All balances are payable to NASD Dispute Resolution, Inc. and are due immediately upon receipt of the Award by the parties.

Concurring Arbitrators' Signatures

Julie B. Greene, Esq.
Public Arbitrator, Presiding Chair

Signature Date

J. Coleman Budd
Industry Arbitrator

Signature Date

Peter J. Towle, Esq.
Public Arbitrator

Signature Date

1-16-01

Date of Service (For NASD-DR office use only)