

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

**Name of Claimant**

Banc of America Investment Services, Inc.

Case No. 00-04913

**Names of Respondents**

Legg Mason Wood Walker, Inc.  
Richard Andrew Link

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**REPRESENTATION OF PARTIES**

For Banc of America Investment Services, Inc. ("Banc of America"), hereinafter referred to as "Claimant": George C. Covington, Esq. and Meg Gibbs, Esq., Kennedy Covington Lobdell & Hickman, L.L.P., Charlotte, North Carolina.

For Legg Mason Wood Walker, Inc. ("Legg Mason") and Richard Andrew Link ("Link"), hereinafter collectively referred to as "Respondents": Dana N. Pescosolido, Esq., Saul Ewing, L.L.P., Baltimore, Maryland.

**CASE INFORMATION**

Statement of Claim filed on or about: November 6, 2000.

Claimant signed the Uniform Submission Agreement on: November 2, 2000.

Response to Request for Interim Injunction filed by Respondents on or about: November 8, 2000.

Statement of Answer filed by Respondent Legg Mason on or about: November 27, 2000.

Statement of Answer and Counterclaim filed by Respondent Link on or about: November 27, 2000.

Respondent Legg Mason signed the Uniform Submission Agreement on: November 27, 2000.

Respondent Link signed the Uniform Submission Agreement on: November 2000.

Statement of Answer to Counterclaim filed by Claimant on or about: December 8, 2000.

**CASE SUMMARY**

The Claimant requested an expedited hearing pursuant to Rule 10335(d)(1) of the NASD Code of Arbitration Procedure (the "Code") requesting injunctive relief and alleging the following causes of action: 1) breach of contract; 2) conversion; 3) misappropriation of trade secrets; 4) wrongful interference with contracts; and 5) breach of fiduciary duty. The causes of action relate to Respondents' solicitation of customers assigned to Respondent Link when employed with Claimant.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: 1) there is no valid and enforceable contract which prohibited Respondent Link from soliciting his customers; 2) Respondent Link followed standard custom and practice in the industry whereby brokers make copies of certain records to better serve their clients; 3) Respondents did not cause customers to breach any customer obligations to Claimant; and 4) Respondent Link did not owe Claimant a duty of loyalty after his resignation of employment with Claimant.

Respondents asserted causes of action in their counterclaim for tortious interference with business relationships. Respondents alleged that Claimant maliciously and intentionally interfered with Respondent Link's relationships with his clients.

Unless specifically admitted in its Answer, Claimant denied the allegations made in the counterclaim and asserted the following defenses: 1) Claimant took reasonable steps to enforce its rights under the Code of Conduct signed by Respondent Link; 2) Claimant established a reasonable likelihood of prevailing against Respondents in its hearing on the merits; 3) Claimant's statements made to customers concerning delays in customer account transfers were truthful; 4) Respondents' damages are speculative and unreasonable; and 5) Respondents failed to plead with specificity their claim for an accounting of payments due to Respondent Link.

### **RELIEF REQUESTED**

Claimant requested: 1) injunctive relief; 2) compensatory damages in the amount of \$253,151.04 for lost production; and 3) dismissal of the counterclaim.

Respondents requested: 1) dismissal of the Statement of Claim; 2) compensatory damages in the amount of \$60,000.00 for lost production; 3) an accounting of Respondent Link's productions; 4) payment of all amounts due; 5) penalties and attorneys' fees under the wage and hours statutes of the state of South Carolina; and 6) reimbursement of medical expenses incurred by Respondent Link during his lapse of insurance coverage.

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

On November 9, 2000, the interim injunctive relief arbitrator, Chairperson Malloy, entered an Order (the "Interim Injunctive Order") which enjoined Respondents from: 1) soliciting any business from any client of Claimant whom Respondent Link served or whose name became known to him while in the employ of Claimant; and 2) accepting any business or account transfers from said clients whom Respondent Link or anyone acting on his behalf or in concert with him had solicited at any time in the past for the purpose of doing business with Respondent Legg Mason. Further, Chairperson Malloy ordered that: 1) upon receipt of an authorized ACAT executed by a client, if any, Respondent Link shall be permitted to use the records for said client as necessary in the ordinary course of servicing said client; 2) if no authorized ACAT was received by Respondents for a particular client by November 9, 2000, Respondents were to return to Claimant all holding pages, account statements and all copies

and other records related to the former Claimant accounts or client for which no ACAT requests had been received; 3) Respondents be restrained from using, disclosing or transmitting for any purpose information contained in the records of Claimant, including but not limited to the names, addresses and confidential information of the clients; and 4) Respondents were to immediately return to Claimant all original and copies of said records.

On or about November 14, 2000, the parties moved for clarification of the Interim Injunctive Order. On November 16, 2000, Chairperson Malloy entered an Order ("Clarification of Injunctive Order") which clarified the Interim Injunctive Order. Chairperson Malloy ordered that: 1) the Respondents are restrained from processing and accepting any business from those customers whose ACAT forms were received after November 9, 2000; and 2) the Interim Injunctive Order shall remain intact, notwithstanding said clarification.

On or about November 28, 2000, Respondents filed a Motion for Reconsideration of the Interim Injunctive Order. Claimant filed its Response to the Motion on December 8, 2000. After a hearing on the Motion on December 11, 2000, the undersigned arbitrators (the "Panel") entered its Supplemental Interim Order dated December 15, 2000 which modified the Interim Injunctive Order. The Panel ordered that: 1) if a client requests a particular service, the contacted person and Respondents may perform the requested service; and 2) if a client requests to transfer an account, then information and forms may be forwarded without delay to the client for purposes of effectuating the client initiated transfer to the Respondents. Further, the Panel ordered Claimant to complete without delay the processing of ACAT forms received by the Respondents on or before November 9, 2000, and those ACAT forms initiated by the clients which are currently held by Respondents and received after November 9, 2000.

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:

1. The Interim Injunctive Order, including all amendments and supplements thereto, is terminated and dissolved effective February 14, 2001.
2. All claims asserted by Claimant are dismissed with prejudice.
3. All claims asserted by Respondents are dismissed with prejudice.
4. Each party shall bear their respective costs, including attorneys' fees.
5. All other requests for relief not specifically addressed herein are denied.

### **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	= \$ 500.00
Interim injunctive relief surcharge	= \$2,500.00
Counterclaim filing fee	= \$1,250.00

#### **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 (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: November 9, 2000 1 session	
One (1) Pre-hearing session with Panel x \$1,000.00	= \$1,000.00
Pre-hearing conference: November 21, 2000 1 session	
Five (5) Hearing sessions x \$1,200.00	= \$6,000.00
Hearing Dates: December 11, 2000 2 sessions	
February 12, 2001 2 sessions	
February 13, 2001 1 session	
Total Forum Fees	= \$7,450.00

The Panel has assessed \$3,725.00 of the forum fees to Claimant.

The Panel has assessed \$3,725.00 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.

No administrative costs were incurred during these proceedings.

### **Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 500.00	
Interim Injunctive Relief Surcharge	= \$ 2,500.00	
Member Fees	= \$ 3,800.00	
Forum Fees	= \$ 3,725.00	
Total Fees	= \$10,525.00	
<u>Less payments</u>	<u>= \$ 7,800.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$2,725.00

Respondent Legg Mason 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 be and hereby are jointly and severally liable for:

Counterclaim Filing Fee	= \$1,250.00	
Forum Fees	= \$3,725.00	
Total Fees	= \$4,975.00	
<u>Less payments</u>	<u>= \$2,450.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$2,525.00

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/  
William H. Malloy, Jr., Esq.  
Public Arbitrator, Presiding Chair

\_\_\_\_\_  
Signature Date

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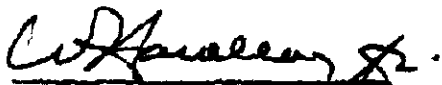
Member Fees	= \$3,800.00	
Total Fees	= \$3,800.00	
<u>Less payments</u>	<u>= \$3,800.00</u>	
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**Concurring Arbitrators' Signatures**



William H. Malloy, Jr., Esq.  
Public Arbitrator, Presiding Chair

MARCH 2, 2001  
Signature Date



Bernard H. Cantor, Esq.  
Public Arbitrator

2/2/01  
Signature Date

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Daniel W. Desmond, VP  
Industry Arbitrator

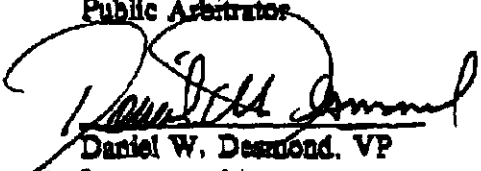
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Signature Date

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

Bernard H. Cantor, Esq.  
Public Arbitrator

  
Daniel W. Desmond, VP  
Industry Arbitrator

Signature Date

3/2/01  
Signature Date

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

/s/

Bernard H. Cantor, Esq.  
Public Arbitrator

\_\_\_\_\_  
Signature Date

/s/

Daniel W. Desmond, VP  
Industry Arbitrator

\_\_\_\_\_  
Signature Date

March 2, 2001

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