

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

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In the Matter of the Arbitration Between

**Names of Claimants**

Carla J. Walter  
Estate of Michael J. Walter

Case No. 01-02086

**Name of Respondent**

Banc of America Investment Services Inc.

Hearing Site: Tampa, Florida

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**REPRESENTATION OF PARTIES**

For Carla J. Walter ("Walter") and the Estate of Michael J. Walter (the "Estate"), hereinafter collectively referred to as "Claimants": Philip J. Snyderburn, Esq., Snyderburn, Rishoi & Swann, Orlando, Florida.

For Banc of America Investment Services, Inc. ("Banc"), hereinafter referred to as "Respondent": William W. Deem, Esq., McGuireWoods LLP, Jacksonville, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 23, 2001.  
Claimants signed the Uniform Submission Agreement: May 10, 2001.  
Statement of Answer filed by Respondent on or about: July 5, 2001.  
Respondent signed the Uniform Submission Agreement: May 22, 2001.

**CASE SUMMARY**

Claimants asserted the following causes of action: fraudulent inducement; breach of fiduciary duty; negligence; breach of contract; and, unsuitability. The causes of action relate to the purchase of Class B Mutual Funds for Claimants' accounts and Respondents' failure to recommend the sale of Claimants' shares of LookSmart, Ltd.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

**RELIEF REQUESTED**

Claimants requested damages of \$441,142.00 for losses in the account of Carla J. Walter and damages of \$158,595.00 for losses in the account of the Estate of Michael

J. Walter. Further, Claimants requested damages of \$1,305,000.00 representing the losses incurred as a result of the decrease in value of the LookSmart, Ltd. options together with interest, all costs of this proceeding and punitive damages.

Respondent requested that this proceeding be dismissed, that Respondent's records be expunged, and that it be awarded costs and attorneys' fees under applicable law.

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

The parties agreed that the Award in this matter may be executed in counterpart copies.

### **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:

Respondent is liable and shall pay to Claimant Carla J. Walter compensatory damages in the sum of \$603,932.00, plus pre-judgment interest at the rate of 10% per annum from August 13, 2001 until the date of payment of the Award. Compensatory damages are awarded based upon Respondent's negligence and breach of fiduciary duty.

Respondent is liable and shall pay to Claimant Carla J. Walter the sum of \$500.00 representing reimbursement of the claim filing fee previously paid by Claimants to NASD Dispute Resolution, Inc.

The claims of Claimant the Estate of Michael J. Walter are denied.

Any and all requests for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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
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### **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 firm is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$600.00
Hearing process fee	= \$4,500.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

### **Forum Fees and Assessments**

The panel has the authority to assess 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:

Two Pre-hearing sessions with the Panel x \$1,200.00	= \$2,400.00
Pre-hearing conferences: November 5, 2001	1 session
December 3, 2001	1 session
Ten Hearing sessions x \$1,200.00	= \$12,000.00
Hearing Dates: March 11, 2002	2 sessions
March 12, 2002	2 sessions
March 13, 2002	2 sessions
March 14, 2002	2 sessions
March 15, 2002	2 sessions

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Total Forum Fees	= \$14,400.00
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The panel has assessed the total forum fees of \$14,400.00 to Respondent.

### **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**

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee = \$500.00

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Total Fees = \$500.00

Less payments = \$500.00

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Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent be and hereby is solely liable for:

Member Fees = \$7,600.00

Forum Fees = \$14,400.00

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Total Fees = \$22,000.00

Less payments = \$7,600.00

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Balance Due NASD Dispute Resolution, Inc. = \$14,400.00

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon the parties' receipt of the Award pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

William E. Gottfried, Esq.	-	Public Arbitrator, Presiding Chair
Joe S. Tarrer, III	-	Public Arbitrator
David C. Lockhart	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/S/  
William E. Gottfried, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
Joe S. Tarrer, III  
Public Arbitrator

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

### Non-Public Arbitrator

Signature Date

**Date of Service** (For NASD-Dispute Resolution office use only)

Fee Summary

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee = \$500.00

Total Fees = \$500.00

Less payments = \$500.00

Balance Due NASD Dispute Resolution, Inc. = \$0.00

Respondent be and hereby is solely liable for:

Member Fees = \$7,600.00

Forum Fees = \$14,400.00

Total Fees = \$22,000.00

Less payments = \$7,600.00

Balance Due NASD Dispute Resolution, Inc. = \$14,400.00

All balances are due and payable to NASD Dispute Resolution, Inc. immediately upon the parties' receipt of the Award pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

William E. Gottfried, Esq. -

Public Arbitrator, Presiding Chair

Joe S. Tarrer, III -

Public Arbitrator

David C. Lockhart -

Non-Public Arbitrator

Concurring Arbitrators' Signatures



William E. Gottfried, Esq.

Public Arbitrator, Presiding Chair

5-1-02

Signature Date

Joe S. Tarrer, III

Public Arbitrator

Signature Date



David C. Lockhart  
Non-Public Arbitrator

4/30/2002  
Signature Date

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Date of Service (For NASD-Dispute Resolution office use only)