

**Award
NASD Dispute Resolution**

In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 03-03006

Banc of America Investment Services, Inc.,

Name of the Respondent

Hearing Site: Albuquerque, New Mexico

Anthony Gonzales,

REPRESENTATION OF PARTIES

Claimant Banc of America Investment Services, Inc., hereinafter referred to as "Claimant," was represented by Rodolfo Parga, Jr., Esq. and William A. Richards, Esq. of Ryley Carlock & Applewhite, P. A. located in Phoenix, Arizona.

Respondent Anthony Gonzales, hereinafter referred to as "Respondent," was represented by Bruce A. Koehler, Esq. of Mounce, Green, Myers, Safi & Galatzan, P. C. located in El Paso, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about April 24, 2003.

Claimant signed the Uniform Submission Agreement on April 29, 2003.

Respondent filed a Statement of Answer and Counterclaim on or about June 11, 2003.

Claimant's Response to Counterclaim was filed on or about June 16, 2003.

Respondent did not sign the Uniform Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimant asserted various claims for relief including:

- Breach of contract;
- Theft;
- Breach of fiduciary duty;
- Misappropriation of trade secrets;
- Unfair competition;
- Interference with prospective economic advantage;

- Breach of common law;
- Conversion;
- Injunction;

In the Statement of Claim, Claimant requested that the arbitration panel enter a permanent injunction against Respondent. Claimant also requested an award of damages.

Respondent denied all liability in the Statement of Answer and asserted various affirmative defenses, including:

- The non-competition agreement at issue is void;
- The claim is barred by *res judicata*, collateral estoppel, and waiver.

In his Counterclaim, asserted various claims for relief, including:

- Interference with contractual relations;
- Unfair competition.

RELIEF REQUESTED

In the Statement of Claim, Claimant requested:

Compensatory Damages	Unspecified amount
Interest	Unspecified amount
Attorneys' Fees	Unspecified amount
Costs	Unspecified amount
Other damages	Unspecified amount
Injunctive Relief	

In the Statement of Answer, Respondent requested:

Compensatory Damages	Unspecified amount
Punitive Damages	Unspecified amount
Interest	Unspecified amount
Attorneys' Fees	Unspecified amount
Costs	Unspecified amount
Other damages	Unspecified amount

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to 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 agree that the award in this matter may be executed in counterpart copies or that a handwritten, signed award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution, Inc.

AWARD

After considering the pleadings and the testimony and evidence presented at the hearing, the Arbitration Panel has decided in full and final resolution of the issues submitted for determination as follows:

An in-person hearing on the request by Claimant Banc of America Investment Services, Inc. for injunctive relief under Rule 10335 of the NASD Code of Arbitration Procedure was held in this matter on June 17, 2003. Claimant appeared through its corporate designee Mark Benson and its attorneys Ryley Carlock & Applewhite, P. A. (William A. Richards, Esq.). Respondent appeared individually and through his attorneys Mounce, Green, Myers, Safi & Galatzan, P. C. (Bruce A. Koehler, Esq.).

At the hearing on the request for a permanent injunction, the following occurred:

1. The parties accepted the panel's composition.
2. On the parties' stipulation, the panel entered a protective order dated June 17, 2003.
3. The panel marked and admitted into evidence Arbitrators' Exhibit No. 1, consisting of each party's uniform submission agreement, Claimant's statement of claim, Respondent's statement of answer and counterclaim, Claimant's reply to the counterclaim, an order dated April 29, 2003 entered by the United States District Court for the Western District of Texas in *Bank of America Investment Services, Inc. v. Anthony Gonzales*, EP 03-CA-147-DB, a preliminary injunction dated May 21, 2003 entered by the United States District Court for the Western District of Texas in *Bank of America Investment Services, Inc. v. Anthony Gonzales*, EP 03-CA-147-DB and the panel's June 17, 2003 protective order.
4. Claimant and Respondent stipulated to the dismissal of all their respective claims for relief other than Claimant's request for a permanent injunction and each party's claim against the other for costs (including forum fees) and attorney's fees.
5. In resolving the request for permanent injunction, the panel used the law of the State of Texas.
6. The panel grants the following permanent injunction:
 - a. Respondent is prohibited from retaining in any manner or form any document or other physical media (e.g., computer disk) that (i) contains any of Claimant's proprietary or confidential information or trade secrets and that (ii) was provided to Respondent or obtained, compiled or reproduced by him while employed by Claimant;
 - b. Respondent is prohibited from disclosing or using in any manner any document or other physical media described in Paragraph 6(a), above, to solicit or attempt to solicit persons who were customers of Claimant on April 2, 2003; and

- c. Respondent is not enjoined from contacting clients for whom he performed work while employed by Claimant, but only so long as he does not use or disclose any document or other physical media described in subparagraph (a), above.
7. The parties' claims for damages and non-injunctive relief, other than each party's claim against the other for costs (including forum fees) and attorney's fees, are dismissed.
 8. The parties are directed to jointly move the United States District Court for the Western District of Texas in *Bank of America Investment Services, Inc. v. Anthony Gonzales*, EP 03-CA-147-DB to dissolve the preliminary injunction. The parties shall file the motion within ten (10) calendar days from the date of this order.
 9. A party shall be responsible for the NASD surcharges and other fees charged separately to it and for one-half (1/2) of the remaining NASD fees and expenses (e.g., postponement fees, arbitrator honoraria) assessable herein.
 10. Each party's claim against the other for costs and attorney's fees is dismissed and each party shall bear its own costs and attorney's fees.
 11. Any relief not specifically awarded is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$	500.00
Counterclaim filing fee	= \$	250.00

Postponement Fees

Claimant is liable for postponement fees in the amount of \$500.00 in connection with the postponement request.

Respondent is liable for postponement fees in the amount of \$500.00 in connection with the postponement request.

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.

Member surcharge	= \$	1,500.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	2,200.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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 (2) Hearing sessions @ \$1,000	= \$ 2,000.00
Hearing Date(s): June 17, 2003 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$ 2,000.00

1. The Panel has assessed ½ forum fees in the amount of \$1000.00 to Claimant.
2. The Panel has assessed ½ forum fees in the amount of \$1000.00 to Respondent.

Fee Summary

Claimant is liable for:

Initial Filing Fee	= \$ 500.00
Postponement Fee	= \$ 500.00
Injunctive Fee	= \$ 2,500.00
Member Fees	= \$ 4,450.00
Forum Fees	= \$ 1,000.00
<hr/> Total Fees	<hr/> = \$ 8,950.00
Less payments	= \$ 5,250.00
<hr/> Balance Due NASD	<hr/> = \$ 3,700.00

Respondent is liable for:

Counterclaim Filing Fee	= \$ 250.00
Postponement Fee	= \$ 500.00
Forum Fees	= \$ 1,000.00
<hr/> Total Fees	<hr/> = \$ 1,750.00
Less payments	= \$ 1,000.00
<hr/> Balance Due NASD Dispute Resolution	<hr/> = \$ 750.00

Non-Party EDI Financial (Member firm that employs Respondent at time of dispute) is liable for:

Member Fees	= \$ 4,450.00
<hr/> Total Fees	<hr/> = \$ 4,450.00
Less payments	= \$ 1,500.00
<hr/> Balance Due NASD	<hr/> = \$ 2,950.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Clinton W. Marrs, Esq. - Public Arbitrator, Presiding Chairperson
Carl E. Gutman - Public Arbitrator
Rodney O. McWhinney, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signature(s)

/s/ Clinton W. Marrs, Esq.
Clinton W. Marrs, Esq.
Public Arbitrator, Presiding Chairperson

June 24, 2003
Signature Date

/s/ Carl E. Gutman
Carl E. Gutman
Public Arbitrator

July 1, 2003
Signature Date

/s/ Rodney O. McWhinney, Esq.
Rodney O. McWhinney, Esq.
Non-Public Arbitrator

June 28, 2003
Signature Date

July 2, 2003

Date of Service (For NASD Dispute Resolution use only)

06/24/03 TUE 08:35 FAX

NASD REGULATION

007

NASD Dispute Resolution

Arbitration No. 03-03006

Award Page 6 of 6

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Clinton W. Marrs, Esq.- Public Arbitrator, Presiding Chairperson

Carl E. Gutman - Public Arbitrator

Rodney O. McWhinney, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signature(s)Clinton W. Marrs, Esq.
Public Arbitrator, Presiding Chairperson

062403

Signature Date

Carl E. Gutman
Public Arbitrator_____
Signature Date_____
Rodney O. McWhinney, Esq.
Non-Public Arbitrator_____
Signature Date_____
Date of Service (For NASD Dispute Resolution use only)

06/27/03 FRI 09:35 FAX

NASD REGULATION

007

NASD Dispute Resolution

Arbitration No. 03-03006

Award, Page 6 of 6

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Clinton W. Marrs, Esq. - Public Arbitrator, Presiding Chairperson

Carl E. Gutman - Public Arbitrator

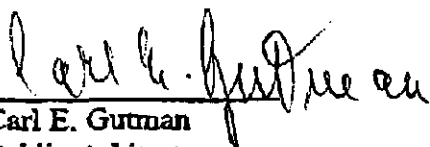
Rodney O. McWhinney, Esq. - Non-Public Arbitrator

Concurring Arbitrators' Signature(s)

Clinton W. Marrs, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date



Carl E. Gutman
Public Arbitrator

7/1/03
Signature Date

Rodney O. McWhinney, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD Dispute Resolution use only)

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Clinton W. Marrs, Esq. - Public Arbitrator, Presiding Chairperson

Carl E. Gutman - Public Arbitrator

Rodney O. McWhinney, Esq. - Non-Public Arbitrator

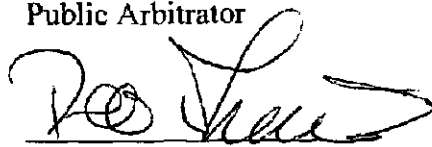
Concurring Arbitrators' Signature(s)

Clinton W. Marrs, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Carl E. Gutman
Public Arbitrator

Signature Date



Rodney O. McWhinney, Esq.
Non-Public Arbitrator

June 28th 03

Signature Date

Date of Service (For NASD Dispute Resolution use only)