

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Brian B. Devane

and

04-07239
Chicago, Illinois

Name of Respondents

Banc of America Investment Services, Inc.
Bank of America N.A.
Bank of America Corporation

Nature of the Dispute: Associated Person vs. Member, Non-Member.

REPRESENTATION OF PARTIES

Brian B. Devane ("**Claimant**") was represented by Peter Ordower, Esq., Chicago, Illinois.

Banc of America Investment Services, Inc. ("**Respondent BOA**"), Bank of America N.A. ("**Respondent BOA, NA**") Bank of America Corporation ("**Respondent BOAC**") hereinafter referred to as ("**Respondents**") were represented by Lawrence Goldberg, Esq., Goldberg Wehrle LLC, St. Louis, Missouri.

CASE INFORMATION

The Statement of Claim was filed on or about October 14, 2004. Submission Agreement of Claimant Brian B. Devane was signed on October 13, 2004.

Statement of Answer was filed by Respondents Banc of America Investment Services, Inc., Bank of America N.A. and Bank of America Corporation on or about December 8, 2004. Amendment to Answer by Interlineation was filed on or about March 3, 2005. Submission Agreement of Respondent Banc of America Investment Services, Inc. was signed on October 27, 2004.

CASE SUMMARY

Claimant asserted the following causes of action: fraud, breach of contract, federal and state securities fraud and violation of the Illinois Wage Payment and Collection Act. It was specifically alleged, among other things, that Respondents, "...defrauded Devane and engaged in a scheme to defraud him by misleading him and inducing him to resign from Bernstein and to accept employment

at BOA...BOA completely misled Devane in that contrary to its representations, it denied him access to clients, did not provide Devane with the Day One Assigned Opportunities, failed to make him a team leader with the latitude to direct the activities of other brokers, did not provide him with his own clients and frustrated any possibility of earning the compensation it misled him into expecting."

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated "...Claimant and Respondent BOA ultimately negotiated Claimant becoming employed at Respondent BOA as a team leader/Private [sic] Client Advisor as Respondent BOA prepared to transition its new operating model in early 2003, a fact well known to Claimant." In addition, Respondents alleged that Claimant has received no less than 20 commercial referrals after he began his employment with Respondent BOA.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$1,750,000.00, punitive damages in the amount of \$1,750,000.00, interest, attorneys' fees and costs.

Respondents requested that this Arbitration Panel: dismiss, in its entirety and with prejudice, Claimant's Statement of Claim, award Respondents their costs, including attorneys' fees, incurred in the defense of this action and such other and further relief as this Panel deems just and proper under the circumstances.

OTHER ISSUES CONSIDERED & DECIDED

Respondents Bank of America N.A. and Bank of America Corporation did not file with the NASD Dispute Resolution properly executed submissions to arbitration but having answered the claim and voluntarily submitted to the jurisdiction of this Arbitration Panel are bound by the determination of the arbitration 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. 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 (the "NASD").

AWARD

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

1. Respondent Banc of America Investment Services, Inc., Bank of America N.A. and Bank of America Corporation are jointly and severally liable for and shall pay to Brian B. Devane the

sum of \$450,000.00 (Four Hundred Fifty Thousand Dollars and No Cents) as compensatory damages.

2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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 = \$600.00

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 firm(s) is Banc of America Investment Services, Inc.

Member surcharge	\$	2,800.00
Pre-hearing process fee	\$	750.00
Hearing process fee	\$	5,000.00
Total Member Fees	\$	8,550.00

Forum Fees and Assessments

The Arbitration 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:

1 Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	450.00
September 14, 2005	1	Session		
1 Pre-hearing session(s) with Panel	x	1,200.00	\$	1,200.00
February 15, 2005	1	Session		

8 Hearing sessions	x	1,200.00	\$	9,600.00
October 17, 2005	2	Sessions		
October 18, 2005	2	Sessions		
October 19, 2005	2	Sessions		
October 20, 2005	2	Sessions		
Total Forum Fees			\$	11,250.00

The Arbitration Panel has assessed \$600.00 of the forum fees to Brian B. Devane.

The Arbitration Panel has assessed \$10,650.00 of the forum fees jointly and severally to Banc of America Investment Services, Inc., Bank of America N.A. and Bank of America Corporation.

Fee Summary

Claimant, Brian B. Devane, is liable for:

Initial Filing Fee	= \$	600.00
<u>Forum Fees</u>	= \$	600.00
Total Fees	= \$	1,200.00
<u>Less payments</u>	= \$	-1,800.00
Balance to be refunded by NASD Dispute Resolution	= \$	- 600.00

Respondent, Banc of America Investment Services, Inc., is liable for:

Member Fees	= \$	8,550.00
Total Fees	= \$	8,550.00
<u>Less payments</u>	= \$	-8,550.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondents, Banc of America Investment Services, Inc., Bank of America N.A. and Bank of America Corporation, are jointly and severally liable for:

<u>Forum Fees</u>	= \$	10,650.00
Total Fees	= \$	10,650.00
<u>Less payments</u>	= \$	-0.00
Balance Due NASD Dispute Resolution	= \$	10,650.00

All balances are due to NASD Dispute Resolution

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NASD Dispute Resolution, Inc.
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ARBITRATION PANEL

Robert C. Bonges, Esq. - Public Arbitrator, Presiding Chair
David L. Lee, Esq. - Public Arbitrator
John S. Burke, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

Robert C. Bonges

Robert C. Bonges, Esq.
Public Arbitrator, Presiding Chair

10/27/05
Signature Date

David L. Lee, Esq.
Public Arbitrator

Signature Date

John S. Burke, Esq.
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 04-07239
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Robert C. Bonges, Esq.
Public Arbitrator, Presiding Chair

David L. Lee

David L. Lee, Esq.
Public Arbitrator

John S. Burke, Esq.
Non-Public Arbitrator

Signature Date

10/25/05

Signature Date

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 04-07239
Award Page 5 of 5

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Public Arbitrator, Presiding Chair

Signature Date

David L. Lee, Esq.
Public Arbitrator

Signature Date



John S. Burke, Esq.
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John S. Burke, Esq. - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Robert C. Bonges

Robert C. Bonges, Esq.

Public Arbitrator, Presiding Chair

October 27, 2005

Signature Date

/s/ David L. Lee

David L. Lee, Esq.

Public Arbitrator

October 25, 2005

Signature Date

/s/ John S. Burke

John S. Burke, Esq.

Non-Public Arbitrator

October 25, 2005

Signature Date

11/1/05

Date of Service (For NASD office use only)