

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Bank of America Investment Services, Inc.

and

Case Number: 06-00048
Hearing Site: Houston, Texas

Name of Respondent

Jose Enrique Garcia, Jr.

NATURE OF DISPUTE

Member Firm v. Associated Person

REPRESENTATION OF PARTIES

Bank of America Investment Services, Inc. ("**Claimant**" or "**BAI**") was represented by Diane C. Fischer, Esq., Kane & Fischer, Ltd., Chicago, Illinois.

Jose Enrique Garcia, Jr. ("**Respondent**" or "**Garcia**") did not make an appearance.

CASE INFORMATION

The Statement of Claim was filed on or about January 4, 2006. The Submission Agreement of Claimant, Bank of America Investment Services, Inc., was signed on or about December 30, 2005.

Respondent Garcia did not file a Statement of Answer or a Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: failure to repay promissory note and commission deficit. Claimant alleged that Respondent defaulted on his promissory note. Respondent first executed a Promissory Note that was effective on or about September 12, 2003 (the "Note"). On or about March 8, 2005, Respondent was terminated and there remained a principal balance of \$41,666.67 due and owing to Claimant. The Note further provided that should Respondent default in the timely payment of any portion of the principal amount, Respondent is obligated to pay interest on any such outstanding amount, plus to pay any and all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements incurred by Claimant. In addition, at the time of

Respondent's termination from BAI, he had accumulated a commission deficit (draws paid in excess of commission payouts less deductions and/or adjustments) of \$6,914.47.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$49,591.81
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

OTHER ISSUES CONSIDERED & DECIDED

By letter dated May 22, 2006, Claimant opted to proceed against Respondent Gqrciq pursuant to Rule 10314(e) of the NASD Code of Arbitration Procedure ("Code").

The arbitrator determined that Respondent Garcia was properly served notice of the Statement of Claim and Notification of the arbitrator by certified mail, and that Respondent Garcia is required to submit to arbitration pursuant to the Code and is bound by the determination of the Arbitrator on all issues submitted.

AWARD

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

- 1.) Respondent, Jose Enrique Garcia, Jr., is liable for and shall pay to Claimant, Bank of America Investment Services, Inc., the sum of \$41,666.67 in compensatory damages pursuant to the terms of the Note;
- 2.) Respondent, Jose Enrique Garcia, Jr., is liable for and shall pay to Claimant, Bank of America Investment Services, Inc., interest at the rate of 5% per annum from and including March 8, 2005 through and including June 6, 2006 pursuant to the terms of the Note;
- 3.) Respondent, Jose Enrique Garcia, Jr., is liable for and shall pay to Claimant, Bank of America Investment Services, Inc., the sum of \$4,896.50 in attorneys' fees pursuant to the terms of the Note;
- 4.) Respondent, Jose Enrique Garcia, Jr., is liable for and shall pay to

Claimant, Bank of America Investment Services, Inc., the sum of \$4,692.13 in costs pursuant to the terms of the Note; and

- 5.) Any relief not specifically enumerated is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$ 1,000.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firm is Bank of America Investment Services, Inc.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,000.00

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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$600.00	= \$ 600.00
Pre-hearing conference: April 24, 2006	1 session
Default Proceedings	= \$ 300.00
Total Forum Fees	= \$ 900.00

The Arbitration Panel has assessed \$450.00 of the forum fees to Bank of America Investment Services, Inc.

The Arbitration Panel has assessed \$450.00 of the forum fees to Jose Enrique Garcia, Jr.

Fee Summary

Claimant, Bank of America Investment Services, Inc., is liable for:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 2,625.00
<u>Forum Fees</u>	<u>= \$ 450.00</u>
Total Fees	= \$ 4,075.00
<u>Less payments</u>	<u>= \$ 3,225.00</u>
Balance Due NASD Dispute Resolution	= \$ 850.00

Respondent, Jose Enrique Garcia, Jr., is liable for:

<u>Forum Fees</u>	<u>= \$ 450.00</u>
Total Fees	= \$ 450.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 450.00

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

ARBITRATOR

Jane E. Bates - Non-Public Arbitrator, Presiding Chair

Arbitrator's signature:

/s/ Jane E. Bates
Jane E. Bates
Public Arbitrator, Presiding Chair

June 6, 2006
Signature Date

June 6, 2006
Date of Service (For NASD office use only)

Fee Summary

Claimant, Bank of America Investment Services, Inc., is liable for:

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Member Fees	= \$ 2,625.00
Forum Fees	= \$ 450.00
<u>Total Fees</u>	<u>= \$ 4,075.00</u>
<u>Less payments</u>	<u>= \$ 3,225.00</u>
Balance Due NASD Dispute Resolution	= \$ 850.00

Respondent, Jose Enrique Garcia, Jr., is liable for:

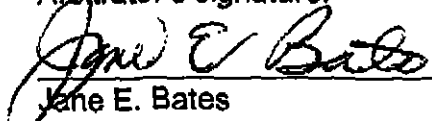
Forum Fees	= \$ 450.00
<u>Total Fees</u>	<u>= \$ 450.00</u>
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 450.00

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

ARBITRATOR

Jane E. Bates - Non-Public Arbitrator, Presiding Chair

Arbitrator's signature:


Jane E. Bates
Public Arbitrator, Presiding Chair

6/6/2006
Signature Date

Date of Service (For NASD office use only)