

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of Claimant

Banc of America Investment Services, Inc.

vs.

Case Number: 06-02161
Hearing Site: Dallas, Texas

Name of Respondent

Bryan Todd Smith

NATURE OF THE DISPUTE

Member vs. Associated Person

REPRESENTATION OF PARTIES

Banc of America Investment Services, Inc. ("Claimant") was represented by Ronald Kane, Esq., Kane & Fischer, Ltd., Chicago, Illinois.

Bryan Todd Smith ("Respondent") did not appear.

CASE INFORMATION

The Statement of Claim was filed on or about May 1, 2006. The Submission Agreement of Claimant was signed on or about April 7, 2006 by Rick Hadrava, Market Director. The Motion to Bar and/or Preclude, and Request for Telephonic Hearing was filed by Claimant on or about October 10, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: breach of promissory note and failure to repay commission deficit. The causes of action related to breach of a forgivable promissory note Respondent signed as part of his employment with Claimant. Upon termination of his employment, the promissory note became due and payable. No payments were made despite demand. In addition, as part of his employment, Respondent received a "draw against commissions." Any draws not covered by Respondent's earned commissions were required to be paid. At the time of his termination, Respondent owed for the sums not covered by his commissions.

RELIEF REQUESTED

Claimant requested an award in the amount of:

Actual/Compensatory Damages	
Promissory Note	\$91,128.00
Commission Deficit	\$ 2,851.39
Interest	
Promissory Note	\$ 4,630.08
Commission Deficit	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made on behalf of the Claimant, the undersigned Panel determined that Respondent has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondent present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent did not file with the NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and is bound by the determination of the Panel on all issues submitted.

On October 30, 2006, the Panel granted Claimant's Request for Telephonic Hearing. The hearing in this matter was held telephonically. No determination was made in regard to the Motion to Preclude and pursuant to this decision, the issue is moot.

AWARD

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

- 1.) Respondent, Bryan Todd Smith, is liable for and shall pay to Claimant, Banc of America Investment Services, Inc., the sum of \$91,128.00 in compensatory damages for breach of promissory note;
- 2.) Respondent, Bryan Todd Smith, is liable for and shall pay to Claimant, Banc of America Investment Services, Inc., interest on the above-stated sum in the amount of \$9,235.20;

- 3.) Respondent, Bryan Todd Smith, is liable for and shall pay to Claimant, Banc of America Investment Services, Inc., the sum of \$2,851.29 in compensatory damages for repayment of the commission deficit:
- 4.) Respondent, Bryan Todd Smith, is liable for and shall pay to Claimant, Banc of America Investment Services, Inc., interest on the above stated sum in the amount of \$157.92;
- 5.) Respondent, Bryan Todd Smith, is liable for and shall pay to Claimant, Banc of America Investment Services, Inc., the sum of \$6,165.00 in attorneys' fees pursuant to the terms of the Promissory Note signed by the Respondent on October 22, 2004;
- 6.) Respondent, Bryan Todd Smith, is liable for and shall pay to Claimant, Banc of America Investment Services, Inc., the sum of \$5,798.66 in costs; and
- 7.) 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 Banc of America Investment Services, Inc.

Member surcharge = \$ 1,100.00
Pre-hearing process fee = \$ 750.00
Hearing process fee = \$ 1,700.00

Forum Fees and Assessments

The Panel has assessed forum fees for each hearing session conducted or each decision rendered on a discovery-related motion on the papers. A 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 \$750.00	= \$	750.00
Pre-hearing conference: August 28, 2006	1 session	
One (1) Hearing session x \$750.00	= \$	750.00
Hearing Date: October 31, 2006	1 session	
Total Forum Fees	= \$	1,500.00

The Panel has assessed \$750.00 of the forum fees to Banc of America Investment Services, Inc.

The Panel has assessed \$750.00 of the forum fees to Bryan Todd Smith.

FEE SUMMARY

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

Initial Filing Fee	= \$	1,000.00
Member Fees	= \$	3,550.00
Forum Fees	= \$	750.00
Total Fees	= \$	5,300.00
Less payments	= \$	5,300.00
Balance Due NASD Dispute Resolution	= \$	0.00

Respondent, Bryan Todd Smith, is liable for:

Forum Fees	= \$	750.00
Total Fees	= \$	750.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	750.00

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

ARBITRATION PANEL

Donald Vincent Enright - Non-Public Arbitrator, Presiding Chair
William D. Connally - Non-Public Arbitrator
Sheldon F. Schobert - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

Donald Vincent Enright
Non-Public Arbitrator, Presiding Chair

Signature Date

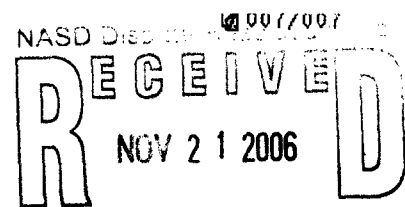
William D. Connally
Non-Public Arbitrator

Signature Date

Sheldon F. Schobert
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

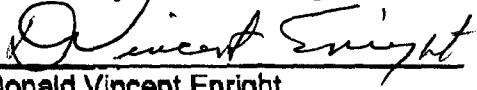


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Non-Public Arbitrator, Presiding Chair

10-31-06
Signature Date

William D. Connally
Non-Public Arbitrator

Signature Date

Sheldon F. Schobert
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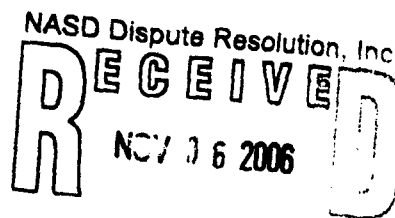
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Non-Public Arbitrator

10/31/06

Signature Date

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