

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Banc of America Investment Services, Inc. (Claimant) v. Dennis McNamara and PNC Investments, LLC (Respondents)

Case Number: 06-02619

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Member v. Associated Person and Member

**REPRESENTATION OF PARTIES**

Claimant Banc of America Investment Services, Inc. hereinafter referred to as "Claimant": John O. Lukanski, Esq., Wolff & Samson PC, West Orange, NJ.

Respondents Dennis McNamara, Jr. ("McNamara") and PNC Investments, LLC ("PNC") hereinafter collectively referred to as "Respondents": John McDonald, Esq., Stark & Stark, P.C., Princeton, NJ.

**CASE INFORMATION**

Statement of Claim filed on or about: May 26, 2006.

Claimant signed the Uniform Submission Agreement: May 26, 2006.

Respondents did not submit a Statement of Answer or submit Uniform Submission Agreements.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, breach of fiduciary duties, tortious interference with business relations, misappropriation of trade secrets, and non-payment of promissory notes.

**RELIEF REQUESTED**

Claimant requested:

- A. Permanent injunctive relief requiring respondents and any persons acting on behalf of or in concert with them, to return immediately to Claimant all original and photocopied documents and computerized data which were removed from Claimant's office, database or computers, as well as all derivatives and compilations thereof;
- B. Permanent injunctive relief restraining and enjoining Respondents and any persons acting on behalf of or in concert with them from discussing, using

disclosing or transmitting, directly or indirectly, any information contained in the records of Claimant;

- C. Permanent injunctive relief enjoining Respondents and any persons acting on behalf of or in concert with them from soliciting, or initiating contact for the purpose of soliciting, any of Claimant's customers Respondent McNamara serviced or whose name became known to him during his employment with Claimant.
- D. Compensatory damages to be determined by the Panel;
- E. The outstanding principal plus interest pursuant to the Notes; and
- F. Any other relief as the Panel deems just.

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

Respondents McNamara and PNC did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and are bound of the determination of the Panel on all issues submitted.

On or about June 9, 2006, the parties agreed to the appointment of Non-Public arbitrator Frank Irizarry, Esq. as the Chairperson.

The parties settled this matter at the hearing on June 12, 2006 and on August 28, 2006, submitted this Stipulated Award.

On or about September 25, 2006, the parties submitted their objection to the insertion by the NASD into the "Award" section of the Stipulated Award, of the phrase "2. Any and all relief not specifically addressed herein is denied." After due deliberation on October, 17, 2006, the Panel granted the parties request and directed that such language be removed from the Stipulated Award.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

#### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Respondent McNamara will repay the entire outstanding balance on his promissory notes, pursuant to the following schedule:
  - a. \$10,000.00 on or before August 31, 2006.
  - b. \$6,500.00 on or before September 30, 2006.
  - c. \$8,250.00 on or before December 31, 2006 with accrued interest on that amount from May 12, 2006.
  - d. \$4,125.00 on or before March 31, 2007 with accrued interest on that amount from May 12, 2006.
  - e. \$4,125.00 on or before June 30, 2007 with accrued interest on that amount from May 12, 2006.

### **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
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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 that employed the associated persons at the time of the events giving rise to the dispute. In this matter, the member firms Banc of America Services, Inc. and PNC Investments LLC are parties.

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,200.00

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

1. Banc of America Securities, Inc. is assessed:

Injunctive relief surcharge	= \$2,500.00
Additional arbitrator honoraria	= \$ 100.00

2. PNC Investments LLC is assessed:

Additional arbitrator honoraria = \$ 100.00

3. Dennis McNamara is assessed:

Additional arbitrator honoraria = \$ 100.00

**Forum Fees and Assessments**

The 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 last four (4) hours or less. Forum fees associated with these proceedings are:

One (1) Injunctive Hearing session @ \$1,200.00/session	= \$ 1,200.00
Hearing Date: June 12, 2006 1 session	
Total Forum Fees	= \$ 1,200.00

1. The parties have agreed that Claimant shall be assessed \$400.00 of the forum fees.
2. The parties have agreed that PNC shall be assessed \$400.00 of the forum fees.
3. The parties have agreed that McNamara shall be assessed \$400.00 of the forum fees.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 4,450.00
Injunctive Fees	= \$ 2,600.00
Forum Fees	= \$ 400.00
Total Fees	= \$ 7,950.00
Less payments	= \$ 6,650.00
Balance Due NASD Dispute Resolution	= \$ 1,300.00

2. Respondent PNC Investments LLC is solely liable for:

Member Fees	= \$ 4,450.00
Injunctive Fees	= \$ 100.00
Forum Fees	= \$ 400.00
Total Fees	= \$ 4,950.00
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 500.00

3. Respondent Dennis McNamara is solely liable for:

NASD Dispute Resolution  
Arbitration No. 06-02619  
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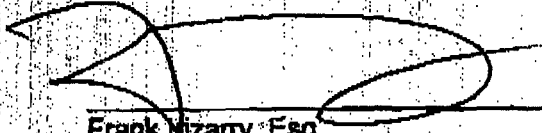
Injunctive Fees	= \$	100.00
Forum Fees	= \$	400.00
Total Fees	= \$	500.00
Less payments	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	500.00

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

**ARBITRATION PANEL**

Frank Izarry, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Louis H. Miron, Esq.	-	Public Arbitrator
Charles L. Prothero, III, Esq.	-	Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Frank Izarry, Esq.  
Non-Public Arbitrator, Presiding Chairperson

10/17/06  
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Signature Date

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Louis H. Miron, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Charles L. Prothero, III, Esq.  
Public Arbitrator

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

October 20, 2006

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Signature Date

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Louis H. Miron, Esq.  
Public Arbitrator

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Signature Date

  
Charles L. Prothero, III, Esq.  
Public Arbitrator

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Signature Date

October 20, 2006  

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