

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimant

BA INVESTMENT SERVICES, INC.

vs.

Award No. 99-00876

Name of Respondent

STANFORD GROUP COMPANY

REPRESENTATION

For Claimant: BA Investment Services, Inc. ("BAIS" or "Claimant") was represented by Myall S. Hawkins, Jenkins & Gilchrest, P.C., 1100 Louisiana, Suite 1800, Houston, Texas 77002

For Respondent: Stanford Group Company ("SGC" or "Respondent") was represented by Linda Brooks and Jack D. Ballard, Ogden, Gibson, White & Broocks, L.L.P., 2100 Pennzoil South Tower, 711 Louisiana Street, Houston, Texas 77002

CASE INFORMATION

Claimant's Original Complaint, Request for TRO and Preliminary and Permanent Injunction (previously filed in the United States District Court for the Northern District of Texas) was filed in lieu of a statement of claim on March 1, 1999.

Claimant's Uniform Submission Agreement was filed on March 2, 1999.

Respondent filed its Response to the Statement of Claim and its Uniform Submission Agreement on March 1, 1999.

HEARING INFORMATION

The hearing was held in Dallas, Texas on March 11, 1999 for two hearing sessions and on March 12, 1999 for two hearing sessions.

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CASE SUMMARY

On Friday, February 19, 1999, three employees of Claimant--Rodney Hadfield, Jeff Wynn, and Debra Brooks--resigned their employment with Claimant and filed a lawsuit against Claimant seeking declaratory relief in a Harris County, Texas state district court. The employees' state court action, which was not made a part of this arbitration between Claimant and Respondent (Claimant's former employees' current employer), was removed to federal court and is still pending.

On Saturday, February 20, 1999, Claimant's former employees began working for Stanford and began calling customers to inform them of their change in employment. On February 24, 1999, Claimant filed with the United States District Court for the Northern District of Texas, Dallas Division, an Original Complaint, Request for TRO and Preliminary and Permanent Injunction against Respondent. On February 26, 1999, the court entered a temporary restraining order restraining SGC and its employees from (1) soliciting any business from any client of BAIS or Bank of America whom BAIS's former employees had served or whose name became known to BAIS's former employees while in the employ of BAIS or (2) using, disclosing, accepting, retaining or transmitting (i) information contained in the records of BAIS, including the names and addresses of said clients; (ii) financial information, investment objectives, or account information of any said clients; or (iii) other confidential information, trade secrets, and commercially sensitive materials. On March 4, 1999, after consultation with the parties, and for the purpose of allowing an expedited arbitration of the dispute, the court extended the TRO to March 18, 1999, with the qualification that the TRO would expire immediately if the arbitration panel were to deny temporary injunctive relief before March 18.

The parties then proceeded to arbitration on Claimant BAIS's claims of tortious interference with contract and unfair competition and its requests for temporary and permanent injunctive relief and damages.

Respondent denied that it was guilty of any wrongdoing and further asserted (1) that alleged non-compete and confidentiality agreements between BAIS, Bank of America, and their former employees were void and unenforceable, (2) that, even if enforceable, Claimant's former employees had not breached any confidentiality agreements, and (3) that Respondent had not engaged in any conduct that amounted to tortious interference or unfair competition.

RELIEF REQUESTED

Claimant requested temporary and permanent injunctive relief restraining Respondent from:

- (a) soliciting any business from any client of BAIS or Bank of America whom Claimant's former employees served or whose name became known to Claimant's former employees

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while in the employ of BAIS or Bank of America, and from accepting any business or account transfers from any of said clients whom Claimant's former employees on BAIS or Bank of America's behalf, have solicited at any time in the past for the purpose of doing business with Claimant (excluding Claimant's former employees' immediate families);

- (b) Using, disclosing, accepting, retaining, or transmitting (i) information contained in the records of BAIS and Bank of America, including the names and addresses of said clients; (ii) financial information, investment objectives, or account information of any of said clients; (iii) other confidential information, trade secrets, and commercially sensitive materials, and that all such information and records are returned to BAIS and Bank of America, purged from Respondent's possession, custody, and control immediately;
- (c) That Respondent and/or anyone acting in concert with it, including Claimant's former employees, immediately produce a true and correct listing of each and every BAIS and Bank of America customer contacted, including the identification of each and every BAIS customer who executed a "Change of Dealer Authorization" form or similar letter;
- (d) That Respondent and/or anyone acting in concert with it, pay into an Escrow account to be designated by BAIS, any and all commissions paid from any former BAIS or Bank of America customer's account serviced by Claimant's former employees from the date of their resignation, until February 19, 2000, pending the resolution of this matter; and
- (e) Any and all such acts as the Panel deems appropriate for injunctive relief.

Additionally, at the hearing Claimant sought actual damages and attorneys' fees in an amount to be submitted by affidavit.

Respondent requested that the Claimant's claims be dismissed and that it be awarded its attorneys' fees.

OTHER ISSUES CONSIDERED AND DECIDED

The parties to this matter 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 originals remain on file with the NASD Regulation, Inc. Office of Dispute Resolution.

Immediately after completion of the hearing on March 12, 1999 the panel issued an interim order which was distributed to the parties. This award is consistent with that interim order and is a full and final resolution of this matter.

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AWARD

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

1. Claimant's request for temporary restraining order, preliminary and permanent injunction is hereby DENIED.
2. Claimant's request for damages and attorneys' fees is DENIED.
3. The arbitrator issued an interim order consistent with this award and both the order and this award shall take effect March 12, 1999.
4. Costs shall be born by each party incurring such costs.
5. Other than forum fees, which are addressed below, all other claims and requests for relief not specifically awarded here, are, and each of them, hereby denied with prejudice

FORUM FEES

Forum fees are calculated at the rate of \$600.00 per hearing session. There were four hearing sessions x \$600.00 = \$2,400.00 in forum fees. Pursuant to Rule 10332(b) of the Code of Arbitration Procedure (the "Code"), a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less.

The Claimant and Respondent shall each pay one-half of the forum fees in this matter. Pursuant to Rule 10332 of the Code, Claimant has paid to the NASD Regulation, Inc. Office of Dispute Resolution, the non-refundable filing fee of \$500.00 and has paid the hearing session deposit of \$600.00. Claimant BA Investment Services is liable for and shall pay \$600.00 to NASD Regulation, Inc. Respondent Stanford Group Company is liable for and shall pay \$1,200.00 to NASD Regulation, Inc.

OTHER FEES

Pursuant to Rule 10333 of the Code, Claimant BA Investment Services, Inc. shall pay the NASD Regulation, Inc. Office of Dispute Resolution, the \$2,600.00 past due member process fee previously invoiced.

Pursuant to Rule 10333 of the Code, Claimant BA Investment Services, Inc. has paid the NASD Regulation, Inc. Office of Dispute Resolution, the \$1,000.00 member surcharge previously invoiced.

*SUEAN KOZACIK, Esq.**Fax 312.236.9239*

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Pursuant to Rule 10333 of the Code, Respondent Stanford Group Company shall pay the NASD Regulation, Inc. Office of Dispute Resolution, the \$2,600.00 past due member process fee previously invoiced

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Concurring Arbitrators' Signatures:

Dated:

Frank Arnold
Public Arbitrator, Presiding Chair

Mark Williams
Public Arbitrator, Panelist

Simeon R. Trotter

Simeon R. Trotter
Industry Arbitrator, Panelist

21 APRIL 99

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Concurring Arbitrators' Signatures:

Dated:

Frank Arnold
Public Arbitrator, Presiding Chair



Mark Williams
Public Arbitrator, Panelist

4.23.99

Simeon R. Trotter
Industry Arbitrator, Panelist


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Concurring Arbitrators' Signatures:

Dated:



Frank Arnold
Public Arbitrator, Presiding Chair

4/26/99

Mark Williams
Public Arbitrator, Panelist

Simeon R. Trotter
Industry Arbitrator, Panelist