

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of Capital One Services, Inc.

Docket No. C2008-3

**SECOND CLARIFICATION OF RULING ESTABLISHING
PROCEDURES FOR THE DEPOSITION OF JESSICA DAUER LOWRANCE**

(Issued August 27, 2008)

Capital One Services, Inc (Capital One) seeks additional clarification on three points in the procedures applicable to the deposition of Jessica Dauer Lowrance scheduled for 10 a.m. on August 27, 2008.¹

First, it asks for a ruling specifying that objections based on material subject to a non-disclosure agreement (NDA) will not prevent Ms. Lowrance from answering questions. Capital One notes that it has a NDA with the Postal Service and Bank of America has a independent NDA with the Postal Service. Second, it asks whether counsel may ask questions during the closed door proceedings. Third, it asks whether objections based on relevance may preclude Ms. Lowrance from answering a question.

First, a ruling concerning objections based on material subject to non-disclosure agreements will not be made at this time. This is a request for a ruling rather than a request for clarification. It clearly would be beneficial to have a ruling on this point while the deposition is continuing; however, the Postal Service, Bank of America, and other interested parties should have the opportunity to respond as if this were a request made orally during a hearing.

¹ Second Emergency Motion to Clarify Ruling Establishing Procedures for the Deposition of Jessica Lowrance, August 27, 2008.

Therefore, I will allow interested participants until 8:00 a.m. on August 28, 2008, to file written responses.

Additionally, I direct the Postal Service to provide a copy of the relevant nondisclosure agreement with Bank of America. If the nondisclosure agreement is considered confidential, it may be provided under seal with access limited to Postal Regulatory Commission employees with a need to know.

Second, if counsel is present during the closed session, counsel may ask the previously posed question, and may ask any reasonable follow-up. If counsel is not present during the closed session, the reporter shall pose the original question. The Commission's officer assisting in clarity may attempt to assure complete and responsive answers.

Third, objections based on relevance do not raise issues of privilege. The witness shall answer the questions. Counsel for the witness shall instruct the reporter to note the objection. The Presiding Officer will resolve these issues at a later date. See P.O. Ruling No. C2008-3/3.

RULING

1. The procedures established in P.O. Ruling No. C2008-3/3 are to be understood in light of the discussion in the body of this ruling.
2. The Postal Service shall provide a copy of the relevant nondisclosure agreement with Bank of America, by 8:00 a.m., August 28, 2008.

3. Responsive pleadings are permitted as described in the body of this Ruling.

Dan G. Blair
Presiding Officer