

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

**FILED**  
TIME: 3:25 p.m.

OCT - 1 2004

JAMES BONINI, Clerk  
COLUMBUS, OHIO

-----X  
Discover Bank, c/o Discover Financial  
Services, Inc.,  
Plaintiff,  
v.  
New Vision Financial, LLC,  
Defendant.  
-----X

Civil Action No.: C2-3-686

JUDGE GREGORY L. FROST

Magistrate Judge Mark R. Abel

**STIPULATED PROTECTIVE ORDER**

WHEREAS, plaintiff Discover Bank, c/o Discover Financial Services, Inc. ("Discover Bank") has brought the above-captioned matter (the "Action") against defendant New Vision Financial, LLC ("New Vision"); and

WHEREAS, the parties hereto (the "Parties") have sought the production of documents and information which the Parties consider or may consider to be confidential, sensitive, private and/or proprietary, and which should be maintained as confidential in order to protect the legitimate business interests of the Parties; and

WHEREAS, the Parties desire to protect against the unauthorized disclosure and the misuse of confidential information obtained as the result of proceedings in this Action;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned counsel for the Parties, as follows:

1. This Order shall govern the production, use, handling and disclosure of all documents, responses to interrogatories, transcripts of depositions and hearings, testimony or other information produced during the course of this Action by the Parties, or by non-parties pursuant to subpoena, together with any information derived therefrom ("Discovery Material").

2. The Party who produces Discovery Material in the Action (the "Producing Party") may designate by written notice such Discovery Material as "Confidential Discovery Material" or "Confidential Attorneys Only Material" under the terms of this Order. The requirement of written notice shall be fulfilled by stamping the designated Discovery Material with the legend "CONFIDENTIAL" for the former or "CONFIDENTIAL ATTYS ONLY" for the latter on the front of such Discovery Material, or by identifying the material by Bates stamp number, other similar document production number, or by identifying information responsive to a particular interrogatory.

3. When transcripts of depositions contain testimony which refers to or incorporates any Confidential Discovery Material or Confidential Attorneys Only Material, then such transcripts shall be deemed to have the same level of protection hereunder as the underlying Discovery Material referred to in the transcripts. Testimony given at a deposition may be designated Confidential Discovery Material or Confidential Attorneys Only Material by an appropriate statement at the time of the deposition, or subsequent written notice by any party within 30 days of receipt of the deposition transcript.

4. In the event that any party disagrees with the designation of any Discovery Material as Confidential Discovery Material or Confidential Attorneys Only Material, that party shall advise counsel who so designated that Discovery Material in writing of their objection and identify the Discovery Material with sufficient specificity to permit the designating party to identify it. Counsel for the designating party shall give good faith consideration to such a written objection. Within twenty (20) days of receiving this written objection, counsel for the designating party shall advise counsel for the objecting party whether the designating party will change the designation of the Discovery Material. If counsel for the parties are unable to resolve a disputed designation after a good faith effort to do so on an informal basis, any party may

present the matter to the Court for resolution. During the pendency of any such dispute, the designated Discovery Material shall continue to be treated as designated in accordance with the provisions of this Order.

5. Confidential Discovery Material and Confidential Attorneys Only Material, including any portion of the contents thereof, shall be used by the persons receiving such materials and their counsel, subject to the provisions of this Order, solely for the purpose of the prosecution or defense of the claims, affirmative defenses, and/or counterclaims asserted in the pleadings filed in the Action and for no other purpose.

6. Confidential Discovery Material shall not be given, shown, made available, discussed or otherwise communicated in any way to anyone other than: (a) the Parties to the Action; (b) the attorneys for either of the Parties to the Action, including any member, associate, or employee of a law firm who is working on the Action, or any in-house counsel for any Party; (c) any expert retained by either of the Parties, provided that such expert is not employed by or a consultant to any competitor of the Producing Party; (d) the Court, special master, other court personnel and stenographic and other deposition reporters; (e) fact witnesses when a good faith basis for disclosing the material exists; and (f) commercial copying services employed by the parties for the purpose of making copies of the Discovery Material for use in connection with the Action.

7. Confidential Attorneys Only Material shall not be given, shown, made available, discussed or otherwise communicated in any way to anyone other than (a) the attorneys for either of the Parties to the Action, including any member, associate, or employee of a law firm who is working on the Action, or any in-house counsel for any Party; (b) the Court, special master, other court personnel and stenographic and other deposition reporters; and (c) commercial copying

services employed by the parties for the purpose of making copies of the Discovery Material for use in connection with the Action.

8. Any Party (or its counsel) who gives, shows, makes available, discusses or otherwise communicates in any way any Confidential Discovery Material to any person identified in subparagraphs 6(c) or 6(e) hereof, must first obtain, in writing, in the form annexed hereto as Exhibit A, a written agreement binding such person to the terms of this Order ("Exhibit A Agreement"). A copy of any such Exhibit A Agreement shall be sent to counsel for the Producing Person who produced such Confidential Discovery Material within three (3) days of its execution.

9. If, at any hearing in connection with any motion or other proceeding, or at trial, a party intends to rely upon or offer into evidence any Confidential Discovery Material or Confidential Attorneys Only Material, that party shall inform all interested persons at least ten (10) business days in advance so that all parties and interested persons may take such steps as they deem reasonably necessary to preserve the confidentiality of such material.

10. Materials filed with the Court (including, but not limited to, hearing transcripts) which contain or reveal Confidential Discovery Material or Confidential Attorneys Only Material shall be labeled "CONFIDENTIAL -- FILED PURSUANT TO CONFIDENTIALITY STIPULATION" and shall be kept under seal by the Court in accordance with the proper procedures of the Southern District of Ohio. To the extent practicable, only those portions of the filed papers that are themselves designated Confidential Discovery Material or Confidential Attorneys Only Material should be filed under seal. The Clerk of the Court is directed to accept and to file under seal all papers designated as Confidential Discovery Material or Confidential Attorneys Only Material pursuant to the terms of this Order.

11. This Order shall not, nor shall any provision herein, affect any person's right to object to any discovery request, including the right to assert that no discovery should be had concerning a given subject matter, or that the discovery sought is overly burdensome or is otherwise objectionable.

12. All Confidential Discovery Material or Confidential Attorneys Only Material produced or disclosed in this action shall remain the property of the Producing Person who produced such material irrespective of how and in what form produced. Within thirty (30) days after the final termination of the Action by judgment, settlement or other order, all such confidential material (including all copies, excerpts and summaries thereof) shall, at the option of the Producing Party, be either returned or destroyed. In the event that the Producing Party elects to have such confidential material destroyed, the person to whom such material was produced shall provide the Producing Person with a written certification, signed by a member of the bar, attesting that the material was destroyed.

13. If any person bound to this Order who is in possession of Discovery Material designated as Confidential Discovery Material or Confidential Attorneys Only Material receives a subpoena or other demand from a non-party to the Action seeking production or other disclosure of such Discovery Material, such person shall give notice, as soon as practicable and in no event more than two (2) business days after receiving the subpoena or other demand, to counsel for the Producing Person who produced the Confidential Discovery Material or Confidential Attorneys Only Material sought in the subpoena. Unless directed by a court of competent jurisdiction, the person subpoenaed shall not produce or disclose any of the Confidential Discovery Material or Confidential Attorneys Only Material for a period of five (5) business days after providing such notice to the Producing Party, but in no event shall production or disclosure be made before notice is given. If, within five (5) business days of receiving such

notice, the Producing Party objects to production, the person subpoenaed shall cooperate reasonably with the Producing Party seeking to quash such subpoena and shall not thereafter produce such Confidential Discovery Material or Confidential Attorneys Only Material, except pursuant to a court order requiring compliance.

14. Absent written permission of the Producing Party disclosing the Confidential Discovery Material or the Confidential Attorneys Only Material, the provisions of this Order shall continue to be binding after the conclusion of this Action.

15. This Order has been agreed to by the parties to facilitate discovery and the production of relevant evidence in this action. Neither the entry of this Order, nor the designation of any information or document as Confidential Discovery Material or Confidential Attorneys Only Material, nor the failure to make such designation shall constitute evidence with respect to any issue in this Action.

16. Nothing herein shall affect or restrict the rights of any party with respect to its own documents or to the information obtained or developed independently of the Discovery Material designated as Confidential Discovery Material or Confidential Attorneys Only Material pursuant to this Order.

17. This agreement shall be binding on the parties to this litigation, their attorneys, and the agents, employees, consultants and other persons employed or retained by the parties or their attorneys.

18. This Agreement may be amended by written agreement of all parties to the Action, or by further order of this Court upon motion by any party for good cause shown.

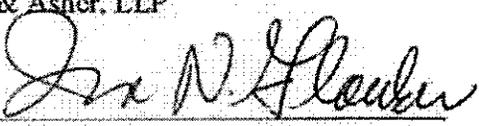
19. This Order may be executed in any number of counterparts, each of which when executed shall be deemed an original, but all of which taken together shall constitute one and the same agreement.

20. This Agreement shall be of no force and effect until such time as it is "so ordered"

in its entirety by the Court.

Dated: September 27, 2004

Jaffe & Asher, LLP

By: 

Ira N. Glauber, Of Counsel Appearing Pro  
Hac Vice  
600 Third Avenue  
New York, New York 10016  
Tel: (212) 687-3000  
Fax: (212) 687-9639  
E-Mail: [lglauber@jaffeandasher.com](mailto:lglauber@jaffeandasher.com)

Attorneys for Plaintiff, Discover Bank

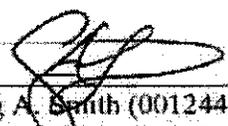
Kutak Rock LLP

By: \_\_\_\_\_

E. Scott Dosek, Esq., Of Counsel  
Appearing Pro Hac Vice  
8601 North Scottsdale Road, Suite 300  
Scottsdale, AZ 85253  
Tel: (480) 429-5000  
Fax: (480) 429-5001  
E-Mail: [scott.dosek@kutarock.com](mailto:scott.dosek@kutarock.com)

Attorneys for Defendant,  
New Vision Financial, LLC

Gamble Hartshorn Johnson, LLC

By: 

Craig A. Smith (0012443)  
One East Livingston Avenue  
Columbus, Ohio 43215-5700  
Tel: (614) 221-0922  
Fax: (614) 365-9741  
E-Mail: [smith@ghilaw.com](mailto:smith@ghilaw.com)

Attorneys for Plaintiff, Discovery Bank

Vorys, Sater, Seymour and Pease LLP

By: \_\_\_\_\_

Rodney A. Holaday (0068018)  
52 East Gay Street, P.O. Box 1008  
Columbus, Ohio 43216-1008  
Tel: (614) 464-6400  
Fax: (614) 464-6350  
E-Mail: [raholiday@vssp.com](mailto:raholiday@vssp.com)

Attorneys for Defendant, New Vision  
Financial, LLC

SO ORDERED

\_\_\_\_\_  
U.S.D.J.

20. This Agreement shall be of no force and effect until such time as it is "so ordered"

in its entirety by the Court.

Dated: September 27, 2004

Jaffe & Asher, LLP

By:



Ira N. Glauber, Of Counsel Appearing Pro Hac Vice  
600 Third Avenue  
New York, New York 10016  
Tel: (212) 687-3000  
Fax: (212) 687-9639  
E-Mail: [iglauber@jaffeandasher.com](mailto:iglauber@jaffeandasher.com)

Attorneys for Plaintiff, Discover Bank

Kutak Rock LLP

By:



E. Scott Dosek, Esq., Of Counsel  
Appearing Pro Hac Vice  
8601 North Scottsdale Road, Suite 300  
Scottsdale, AZ 85253  
Tel: (480) 429-5000  
Fax: (480) 429-5001  
E-Mail: [scott.dosek@kutakrock.com](mailto:scott.dosek@kutakrock.com)

Attorneys for Defendant,  
New Vision Financial, LLC

Gamble Hartshorn Johnson, LLC

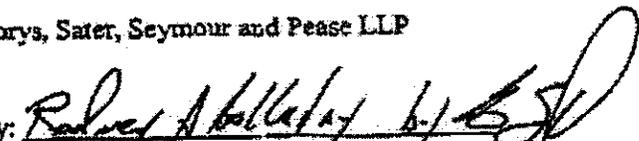
By:

Craig A. Smith (0012443)  
One East Livingston Avenue  
Columbus, Ohio 43215-5700  
Tel: (614) 221-0922  
Fax: (614) 365-9741  
E-Mail: [smith@ghlilaw.com](mailto:smith@ghlilaw.com)

Attorneys for Plaintiff, Discovery Bank

Vorys, Sater, Seymour and Pease LLP

By:



Rodney A. Holaday (0068018)  
52 East Gay Street, P. O. Box 1008  
Columbus, Ohio 43216-1008  
Tel: (614) 464-6400  
Fax: (614) 464-6350  
E-Mail: [raholiday@vssp.com](mailto:raholiday@vssp.com)

Attorneys for Defendant, New Vision  
Financial, LLC

SO ORDERED

  
U.S.D.J.

**EXHIBIT A**

**AGREEMENT CONCERNING MATERIAL COVERED  
BY A CONFIDENTIALITY STIPULATION IN  
DISCOVER BANK, C/O DISCOVER FINANCIAL  
SERVICES, INC. V. NEW VISION FINANCIAL, LLC.  
CIVIL ACTION NO.: C2-3-686.**

The undersigned hereby acknowledges having read the Confidentiality Stipulation dated September \_\_, 2004 in the above entitled matter, understands the terms thereof, and agrees to be bound by same.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature