

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Kathi A. Sharpe

and

00-00017
Phoenix, Arizona

Name of Respondents

Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney Inc.
Thomas H. Seabron

Nature of the Dispute: Customer vs. Member and Associated Person.

REPRESENTATION OF PARTIES

Kathi A. Sharpe ("**Claimant**") was originally represented by Michael Salcido, Esq., Phoenix, Arizona. Claimant was subsequently represented by Alan Baskin, Esq., Phoenix, Arizona. On or about February 24, 2004, Mr. Baskin withdrew from representation of Claimant. Claimant was then represented by R. Harvey Dye, Esq., Anthem, Arizona until August 5, 2005. Claimant subsequently participated *pro se*. Claimant did not appear at the hearing on February 8, 2006.

Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney Inc. ("**Respondent Citigroup**") and Thomas H. Seabron ("**Respondent Seabron**") hereinafter referred to as ("**Respondents**") were represented by Rebecca J. Nelson, Esq., Citigroup Global Markets, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about January 3, 2000. Submission Agreement of Claimant Kathi A. Sharpe was signed on November 18, 1999.

Statement of Answer was filed by Respondents Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney Inc. and Thomas H. Seabron on or about February 22, 2000. Motion to Dismiss was filed on or about February 9, 2006. Supplement to Motion to Dismiss was filed on or about June 8, 2006. Submission Agreement of Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney Inc. was signed on February 18, 2000 by Joanne M. Chormanski. Submission Agreement of Respondent Thomas H. Seabron was signed on January y 25, 2000.

CASE SUMMARY

Claimant asserted the following causes of action: breach of fiduciary duties; breach of duty of care and loyal [sic]; breach of contract; failure to execute orders, and executing orders without discretionary power; negligence; failure to respond to inquiries, or to proved [sic] requested documents and information; dishonest and unethical conduct as defined in the Arizona Securities Act, AAC R14-4-130; negligent supervision and/or failure to supervise; and negligence and/or negligent misrepresentation.

Specifically, Claimant stated:

In summary, Respondents failed to respond for requests for information. They failed to place orders requested by Ms. Sharpe, and made trades in that account after Ms. Sharpe revoked discretionary power. Respondents failed to account for and divide assets, in violation of the Decrees. Respondents failed to make distributions of funds, or wrongfully paid joint funds to Mr. Sharpe. Respondents failed to provide information necessary so that tax returns could be filed for the children's accounts, and then failed to reimburse Ms. Sharpe for paying the taxes on those accounts. Respondents provided an incomplete "accounting" to Ms. Sharpe, and then failed to answer questions about that report. Finally, Respondents have failed to answer letters and phone calls from Ms. Sharpe, her accountant, and her attorney.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated:

The matters about which Claimant now complains arose following her retention of an accountant after matters had been resolved with Claimant and her divorce attorneys and after distribution was made. At this point, Claimant began second-guessing and challenging matters already resolved with her and her legal representatives. Apparently dissatisfied with the division of assets as ordered by the Decree, Claimant and her accountant began raising issues already addressed and resolved with her and her legal representatives. Nonetheless, Smith Barney responded to all requests and provided requested information.

Still dissatisfied, Claimant and her accountant also began to question Smith Barney about outside investments made by Claimant's ex-spouse and challenged Smith Barney's failure to divide these assets outside its control. Smith Barney was not aware of these assets and had no responsibility to divide them pursuant to the Decree. (citation omitted) Nonetheless, when such investments were brought to Smith Barney's attention and proper authorization was received from the parties to the divorce, the investments were transferred to Smith Barney, and Smith Barney assisted Claimant in effecting the division of these investments.

Similarly, Smith Barney assisted Claimant and here attorneys in dividing all other assets which were held at Smith Barney and subject to the Decree. In doing so, Smith Barney

equally divided assets, as ordered by the Decree. It did not, as suggested, make any decision in Mr. Sharpe's favor.

Another main point of complaint, raised by Claimant relates to Claimant's children's custodial accounts.(citation omitted) Claimant contends that Smith Barney failed to provide information and failed to release funds for payment of taxes and tax-related expenses. As with all other accounts, Smith Barney provided requested information regarding the children's custodial accounts. However, as the Decree indicates, these accounts were not to be divided pursuant to the divorce. Moreover, they were custodial accounts for the benefit of minors. In order to make any disbursements from these custodial accounts, Smith Barney needed proper authorization to pay funds from these accounts. This authorization was not provided with the requests when made, as the correspondence attached to the Statement of Claim indicates. As Claimant is aware, Smith Barney worked with Claimant to obtain the requested disbursements.

The last main point of complaint raised by Claimant concerns the liquidation of certain investments to pay off a margin debit balance in Claimant's account. (citation omitted) Claimant contends that Mr. Seabron acted without her authorization in liquidating certain positions and improperly exercised discretion over the account. First, at no time was Mr. Seabron ever granted discretion over the account, nor did he ever exercise any. Rather, Claimant approved all transactions. Second, Mr. Seabron discussed with Claimant on two separate occasions which investments would be sold to pay the margin balance. Mr. Seabron only sold investments that Claimant had authorized and approved after a full review. He did not ignore any instruction from Claimant and did not liquidate any investment which was not authorized by Claimant.

RELIEF REQUESTED

Claimant requested an award of:

1. compensatory damages between \$10,000.00 and \$25,000.00. This includes legal and accounting fees incurred because of Respondents' failure to properly handle the Sharpe accounts. Because Respondents have refused to provide requested information, this amount will likely have to be amended;
2. pre and post judgment interest until the Award is paid in full;
3. "Opportunity" or "Benefit of the Bargain" losses based on how the Sharpe account would have performed had it been properly managed;
4. disgorgement of all commissions, mark ups, profits and margin interest charged to his [sic] account; costs and attorneys' fees incurred herein, including all NASD filing and expert witness fees, pursuant to ARS §§ 12-341.01 and 44-2001;
5. punitive damages in an amount to be determined at the hearing in this matter; and
6. such other and further relief as is deemed just and proper.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

In their Motion to Dismiss, Respondents requested reimbursement of their travel costs in the approximate amount of \$2,800.00 for attendance at the February 8, 2006 hearing.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file, the undersigned arbitrator has determined that Claimant Kathi A. Sharpe has received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

The parties 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 original(s) remain on file with the NASD Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, and the post-hearing submissions, if any, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitration hearing was scheduled and held on February 8, 2006 in Phoenix, Arizona, at the time and place specified in the NASD Notice to the parties dated December 22, 2005. In attendance at the hearing were Respondent, Thomas Seabron, and counsel for Respondent, Ms. Rebecca J. Nelson, Esq. Neither Claimant nor counsel for Claimant appeared at the hearing and, accordingly, no evidence was produced in support of Claimant's claim. This arbitrator has received no communication from Claimant with respect to the failure to appear at the hearing. Likewise, Respondent's counsel stated that she had not been contacted as well. In addition, the NASD has confirmed that it has been unsuccessful in its attempts to contact Claimant.
2. Respondent has moved for dismissal of the claim with prejudice. Due to the considerable time that has passed since this claim has been filed, I am ruling in favor of Respondent and grant the request to dismiss the claim with prejudice. All forum fees are to be assessed against Claimant. No costs are awarded in this matter.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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 = \$125.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm(s) is Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney Inc.

Member surcharge	\$	400.00
Total Member Fees	\$	400.00

Adjournment Fees

Adjournments requested during these proceedings:

Hearing Date(s), November 7-8, 2001, adjournment due to special extension granted by Director of Arbitration following September 11, 2001. No fee assessed.	= \$0.00
Hearing Date(s), January 23, 2003, adjournment requested by Respondent Citigroup, fee waived.	= \$450.00
Hearing Date(s), April 3, 2003, adjournment requested jointly by the parties, fee waived.	= \$450.00
Hearing Date(s), April 5-6, 2005, adjournment requested jointly by the parties, fee waived.	= \$900.00
Hearing Date(s), August 23-24, 2005, adjournment requested by Claimant, fee waived.	= \$450.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

Hearing Date(s), August 23-24, 2005, adjournment requested by Claimant. = \$100.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

3	Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	1,350.00
	June 8, 2000	1	session		
	June 26, 2001	1	session		
	October 27, 2004	1	session		
1	Hearing sessions	x	450.00	\$	450.00
	February 8, 2006	1	session		
	Total Forum Fees			\$	1,800.00

The Arbitrator has assessed \$1,800.00 of the forum fees to Kathi A. Sharpe.

Fee Summary

Claimant, Kathi A. Sharpe, is liable for:

Initial Filing Fee	= \$	125.00
Three Day Cancellation Fee	= \$	100.00
<u>Forum Fees</u>	= \$	1,800.00
Total Fees	= \$	2,025.00
<u>Less payments</u>	= \$	-575.00
Balance Due NASD Dispute Resolution	= \$	1,450.00

Respondent, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney Inc. , is liable for:

Member Fees	= \$	400.00
Total Fees	= \$	400.00
<u>Less payments</u>	= \$	-400.00
Balance Due NASD Dispute Resolution	= \$	0.00

All balances are due to NASD Dispute Resolution

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ARBITRATION PANEL

Warren C. Kotzmann, Esq. - Public Arbitrator, Presiding Chair

Concurring Arbitrator:


Warren C. Kotzmann, Esq.

Public Arbitrator, Presiding Chair

8/10/06
Signature Date

8/11/06
Date of Service (For NASD office use only)