

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between:

William H. Bode, (Claimant) vs. Salomon Smith Barney, Inc., Martin M. Gray, and John Williams, (Respondents)

Case Number: 00-05093

Hearing Site: Washington, D.C.

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**REPRESENTATION OF PARTIES**

Claimant, William H. Bode, hereinafter referred to as "Claimant": Richard S. Kraut, Esq., Dilworth Paxson, PLLC, Washington, D.C. (Mr. Kraut was with the law firm of Storch & Brenner LLP, Washington, D.C., when this claim was originally filed).

Respondent, Salomon Smith Barney, Inc. ("Salomon") and Respondent, John Williams ("Williams") collectively referred to as "Respondents" were represented by: Alejandro Schwed, Esq., of counsel to Salomon Smith Barney, Inc., New York, NY.

Respondent, Martin M. Gray ("Gray"), is deceased.

**CASE INFORMATION**

Statement of Claim filed on or about: November 15, 2000.

Claimant's Amended Statement of Claim filed on or about: October 10, 2001.

Claimant signed the Uniform Submission Agreement: November 14, 2000.

Claimant signed the Revised Uniform Submission Agreement: October 10, 2001.

Statement of Answer filed by Salomon on or about: January 10, 2001.

Salomon signed the Uniform Submission Agreement: January 10, 2001.

Gray did not file a Statement of Answer or sign a Uniform Submission Agreement.

Williams did not file a Statement of Answer or sign a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: failure to execute order to cover a short position; negligence; breach of contract; common law fraud; securities fraud under the laws of the District of Columbia; breach of fiduciary duty; breach of the duty of good faith and

fair dealing; failure to execute orders; and violations of the Conduct Rules of the NASD. Claimant's claim involved the stock of Network Solutions, Inc. ("NSOL").

Unless specifically admitted in its Answer, Salomon denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant made all decisions on the timing of the purchase and sale of the shares of NSOL in his account; Gray advised Claimant against the short sale of NSOL in question; Claimant seeks to hold Salomon and Gray responsible for his own investment decision; Claimant refused to provide a specific price at which to cover his short position in NSOL; because Claimant had not entered a valid order with a specific time or price, and no one at Salomon had discretion over the account, no action could be taken until Claimant placed the specific order; and Claimant had been warned that the transaction he was engaging in was highly risky, and decided to pursue it anyway.

#### **RELIEF REQUESTED**

Claimant requested:

- a. Compensatory damages in the amount of \$174,632.01 as a result of Respondents' conduct;
- b. Interest as provided by District of Columbia law or, alternatively, a reasonable rate of interest on the above compensatory damages;
- c. Punitive damages in the amount of \$523,896.03, representing three times the compensatory damages;
- d. Reasonable attorneys' fees; and
- e. The costs of this proceeding.

Salomon requested that the Statement of Claim be dismissed, and that all costs of this matter be assessed against Claimant.

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

Prior to the hearing in this matter, Respondent Gray passed away. Accordingly, Claimant dismissed his claims against Respondent Gray without prejudice to assert a claim against Respondent Gray's estate.

Notwithstanding Respondent John Williams failure to execute a Uniform Submission Agreement or to file an Answer, Williams was represented by counsel and appeared at the hearing; therefore, the Panel exercised its jurisdiction over Respondent Williams. As a result, Williams is bound by all rulings and determinations of the Panel.

Claimant made a motion to suppress a written statement prepared by Respondent Gray several months before his death. The Panel denied said motion.

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.

### AWARD

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

1. Respondent Salomon is liable for and shall pay to Claimant the sum of \$45,000.00 as compensatory damages.
2. Respondent Salomon is liable for and shall pay to Claimant the sum of \$5,000.00 as attorneys' fees.
3. Claimant's request for punitive damages is denied in its entirety.
4. All claims against Williams are hereby denied in their entirety.
5. That the parties shall bear their respective costs and attorneys' fees, except as Fees are specifically addressed below.
6. All other relief requests not specifically addressed herein are denied in their entirety.

### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 375.00
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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 person at the time of the events giving rise to the dispute. In this matter, Salomon Smith Barney, Inc. is a party.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$3,500.00

**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 lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$1,200.00	= \$1,200.00
Pre-hearing conference: August 9, 2001	1 session
Four (4) Hearing sessions x \$1,200.00	= \$4,800.00
Hearing Dates: January 29, 2002	2 sessions
January 30, 2002	2 sessions
Total Forum Fees	= \$6,000.00

1. The Panel has assessed \$3,000.00 of the forum fees against Claimant.
2. The Panel has assessed \$3,000.00 of the forum fees against Salomon.

**Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$3,000.00
Total Fees	= \$3,375.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution, Inc.	= \$1,800.00
2. Salomon be and hereby is solely liable for:

Member Fees	= \$6,100.00
Forum Fees	= \$3,000.00
Total Fees	= \$9,100.00
Less payments	= \$6,100.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,000.00

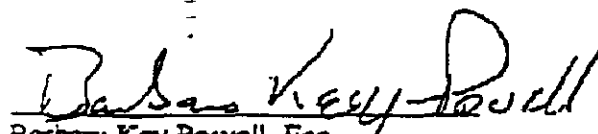
All balances are due and payable to NASD Dispute Resolution, Inc.

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**ARBITRATION PANEL**

Barbara Key Powell, Esq.	-	Public Arbitrator, Chairperson
Edward B. Myers, Esq.	-	Public Arbitrator, Panelist
Oscar W. Carlson, Jr.	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

  
Barbara Key Powell, Esq.  
Public Arbitrator, Chairperson

March 6, 2002  
Signature Date

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Edward B. Myers, Esq.  
Public Arbitrator, Panelist

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

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Oscar W. Carlson, Jr.  
Non Public Arbitrator, Panelist

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Signature Date

March 7, 2002  
Date of Service (For NASD office use only)

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Barbara Key Powell, Esq.	-	Public Arbitrator, Chairperson
Edward B. Myers, Esq.	-	Public Arbitrator, Panelist
Oscar W. Carlson, Jr.	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

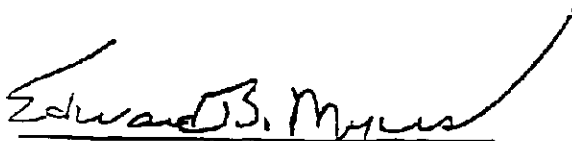
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Barbara Key Powell, Esq.  
Public Arbitrator, Chairperson

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Signature Date

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Edward B. Myers, Esq.  
Public Arbitrator, Panelist

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03/06/02  
Signature Date

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Oscar W. Carlson, Jr.  
Non Public Arbitrator, Panelist

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Signature Date

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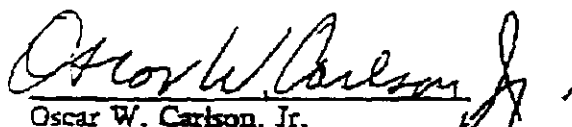
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Edward B. Myers, Esq.  
Public Arbitrator, Panelist

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Signature Date

  
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Oscar W. Carlson, Jr.  
Non Public Arbitrator, Panelist

3-6-02  
\_\_\_\_\_  
Signature Date

March 7, 2002  
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Date of Service (For NASD office use only)