

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:  
James Mallahan, Claimant v. Salomon Smith Barney, Inc., Respondent

Case Number: 01-00307

Hearing Site: Seattle, Washington

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**REPRESENTATION OF PARTIES**

For Claimant:

Fredrick D. Huebner, Esq.  
Cable, Langenbach, Kinerk & Bauer, LLP  
Seattle, Washington

For Respondent:

Eric D. Lansverk, Esq.  
Hillis, Clark, Martin & Peterson  
Seattle, Washington

**CASE INFORMATION**

Statement of Claim filed: January 19, 2001

Claimant's Uniform Submission Agreement signed: January 18, 2000

Statement of Answer filed by Respondent Salomon Smith Barney, Inc.: July 13, 2001

Respondent's Uniform Submission Agreement signed: Not signed

**CASE SUMMARY**

Claimant alleged breach of employment contract, failure to pay commissions, and compensation.

Respondent denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and asserted several affirmative defenses.

**RELIEF REQUESTED**

Claimant requested an accounting of all wages and deferred compensation, payment of double wages pursuant to Washington Wage Act, disgorgement for unjust enrichment, interest, and attorney's fees pursuant to statute.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety.

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

Respondent Salomon Smith Barney, Inc. did not file with the NASD Dispute Resolution a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On January 10, 2003, and orally at the start of the hearing on January 14, 2003, the Claimant clarified his Statement of Claim. Claimant's claims were summarized as follows:

- 1) Collection of Promissory Note – Did Respondent violate Washington's wage laws by attributing 50% of a trading error (the Willman error) to Claimant, compelling him to sign a Promissory Note, and then deducting that amount from Claimant's commissions upon termination of his employment? Claimant sought compensatory damages of \$141,044.13, interest at the statutory of 12% from December 1999, and attorney's fees pursuant to RCW 49.48.030. Claimant abandoned his claim for double damages pursuant to RCW 49.52.070.
- 2) Deferred Compensation Forfeiture – Did Respondent violate Washington's wage laws by forfeiting Claimant's bonuses upon termination of his employment? Claimant sought compensatory damages of \$30,747.80, plus interest at a statutory rate of 12%; the value of 4,306.6 shares of Citigroup stock; and attorney's fees pursuant to RCW 49.48.030.

The parties 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, testimony, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Salomon Smith Barney, Inc. is liable to and shall pay Claimant the sum of \$141,044.13 in compensatory damages on Claimant's claim for Collection of Promissory Note.
- 2) Respondent Salomon Smith Barney, Inc. is liable to and shall pay Claimant interest in the amount of 12% per annum on \$141,044.13 from December 31, 1999, until the date compensatory damages are paid to Claimant in full.
- 3) Respondent Salomon Smith Barney, Inc. is liable to and shall pay Claimant the sum of

\$23,202.00 in attorney's fees, on Claimant's claim for Collection of Promissory Note, pursuant to RCW 49.48.030.

- 4) Claimant's claim for Deferred Compensation Forfeiture is dismissed with prejudice.
- 5) Respondent Salomon Smith Barney, Inc. is liable to and shall pay Claimant the sum of \$568.59 in costs.
- 6) Except as noted above, the parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

#### **FINDINGS AND CONCLUSIONS**

**Collection of Promissory Note:** The Promissory Note executed by Claimant on March 16, 1999, is void in its entirety since Claimant was compelled to sign the Note under economic duress. Respondent, therefore, violated RCW 49.48.010 by withholding a portion of Claimant's wages upon termination without having a valid oral or written agreement authorizing the deduction.

**Deferred Compensation Forfeiture:** Respondent prevails on this claim. Claimant has failed to establish as a matter of law that Respondent's failure to pay certain Deferred Compensation Bonuses upon termination of Claimant's employment constituted an unlawful forfeiture.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Salomon Smith Barney, Inc. is the Respondent and the following fees are assessed:

Member Surcharge	= \$ 1,200.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 2,000.00
<b>Total Member Fees</b>	<b>= \$ 3,800.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair or the parties and the Panel. The following fees are assessed:

One (1) Pre-hearing conference session with the Panel @ \$1,000.00/session	= \$ 1,000.00
Pre-hearing conference: March 5, 2002 1 session	
Four (4) Hearing sessions @ \$1,000.00/session	= \$ 4,000.00
Hearings: January 14, 2003 2 sessions	
January 15, 2003 2 sessions	
One (1) Post-hearing conference session with the Panel @1,000.00/session	= \$ 1,000.00
Post-hearing conference: April 2, 2003 1 session	
<b>Total Forum Fees</b>	<b>= \$ 6,000.00</b>

The Panel assessed the entire amount of \$6,000.00 in forum fees to Respondent Salomon Smith Barney, Inc.

**Fee Summary**

1. Claimant, James Mallahan, is charged with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Less payments</u>	<u>= \$ (1,700.00)</u>
<b>Refund Due Claimant</b>	<b>= \$ (1,450.00)</b>

2. Respondent, Salomon Smith Barney, Inc., is charged with the following fees and costs:

Member Fees	= \$ 3,800.00
<u>Forum Fees</u>	<u>= \$ 6,000.00</u>
Total Fees	= \$ 9,800.00
<u>Less payments</u>	<u>= \$ (3,800.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 6,000.00</b>

All balances are payable to NASD Dispute Resolution and are due upon the receipt of the Award pursuant to Rule 10330(g) of the Code.

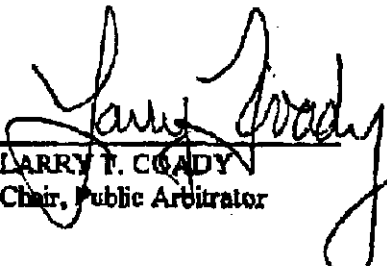
**ARBITRATION PANEL**

*Larry T. Coady*  
*Paul R. Meyer*  
*Patrick L. Hinton, Esq.*

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*Public Arbitrator, Presiding Chair*  
*Public Arbitrator*  
*Non-Public Arbitrator*

**Concurring Arbitrators' Signatures**

  
LARRY T. COADY  
Chair, Public Arbitrator

April 30, 2003  
Signature Date

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PAUL R. MEYER  
Public Arbitrator

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

\_\_\_\_\_  
PATRICK L. HINTON, ESQ.  
Non-Public Arbitrator

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

4/30/03  
Date of Service

**ARBITRATION PANEL**

<i>Larry T. Coady</i>	-	<i>Public Arbitrator, Presiding Chair</i>
<i>Paul R. Meyer</i>	-	<i>Public Arbitrator</i>
<i>Patrick L. Hinton, Esq.</i>	-	<i>Non-Public Arbitrator</i>

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Chair, Public Arbitrator

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Signature Date

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PAUL R. MEYER  
Public Arbitrator

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

  
\_\_\_\_\_  
PATRICK L. HINTON, ESQ.  
Non-Public Arbitrator

4/30/03  
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NAED Dispute Resolution  
Arbitration No. 01-00307  
Award Page 6 of 6

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Paul R. Meyer  
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Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

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Chair, Public Arbitrator

Paul R. Meyer  
PAUL R. MEYER  
Public Arbitrator

PATRICK L. HINTON, ESQ.  
Non-Public Arbitrator

Signature Date

May 6, 2003  
Signature Date

Signature Date

Date of Service