

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Jill D. Cooley and John M. Schmittberger, JTWROS (Claimants) v. Citicorp Investment Services, Inc., Lawrence Shender, and Phillip Groton (Respondents)

Case Number: 01-00325

Hearing Site: New York, New York

Nature of the Dispute: Customers v. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimants Jill D. Cooley ("Cooley") and John M. Schmittberger ("Schmittberger") JTWROS, hereinafter referred to as "Claimants" appeared *pro se* through John M. Schmittberger.

Respondents Citicorp Investment Services ("CIS") and Phillip Groton ("Groton"): David Gorfinkel, Esq., Vice President and Associate General Counsel, Citicorp Investment Services, New York, NY.

Respondent Lawrence Shender ("Shender") appeared *pro se*. Previously represented by: David Gorfinkel, Esq., Vice President and Associate General Counsel, Citicorp Investment Services, New York, NY.

CIS, Groton, and Shender are hereinafter collectively referred to as "Respondents".

CASE INFORMATION

Statement of Claim filed on or about: January 22, 2001.

Amended Statement of Claim filed on or about: August 10, 2001.

Cooley signed the Uniform Submission Agreement: January 22, 2001.

Schmittberger signed the Uniform Submission Agreement: January 22, 2001.

Statement of Answer filed by Respondent CIS on or about: April 30, 2001.

Joint Statement of Answer filed by Respondents on or about: December 26, 2001.

Respondent CIS signed the Uniform Submission Agreement: April 30, 2001 and October 18, 2001.

CASE SUMMARY

In the Statement of Claim and Amended Statement of Claim, Claimants asserted the following causes of action: breach of contract; failure to execute; violation of NASD rules; breach of fiduciary duty; misrepresentations; suitability; and failure to supervise. Claimants' claim involved common stock SSOL.

Unless specifically admitted in its Answer, Respondent CIS denied the allegations made in the Statement of Claim.

Unless specifically admitted in their Answer to the Amended Statement of Claim, Respondents denied the allegations made in the Amended Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim and Amended Statement of Claim, Claimants requested compensatory damages in the amount of \$7,350.00; interest; costs; attorneys' fees; and other case-related costs.

In its Answer, Respondent CIS requested that the Statement of Claim be denied in its entirety.

In their Answer to the Amended Statement of Claim, Respondents requested that the Amended Claim be dismissed in its entirety; legal fees and interest; and such other and further relief as the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondents Shender and Groton did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Arbitrator on all issues submitted.

On or about November 9, 2001, the Arbitrator accepted Claimants' Amended Statement of Claim that added Respondent Phillip Groton.

On or about September 24, 2002, Claimants notified NASD Dispute Resolution that all claims against Respondents CIS and Groton were withdrawn with prejudice.

On or about August 5, 2002, NASD Dispute Resolution was notified that David Gorfinkel, Esq., withdrew as counsel for Respondent Shender. Thereafter, all documents that NASD Dispute Resolution mailed directly to Respondent Shender were returned to sender.

On or about October 9, 2003, the Arbitrator determined:

1. There is no basis to require NASD Dispute Resolution to make a production or to take any further action regarding notice or a Submission Agreement by Respondent Lawrence Shender.
2. Claimant shall have until 5:00 PM on November 15, 2003 to secure and forward to NASD Dispute Resolution another, or other, current addresses for Respondent Lawrence Shender.
3. If no new or other address is submitted by November 15, 2003, the Arbitrator will decide this matter.

After not receiving any further address for Lawrence Shender from Claimants, on or about June 17, 2004, the Arbitrator ordered:

1. The aforesaid matter withdrawn as to Respondents Citicorp Investment Services, Inc. and Phillip Groton.
2. That the matter be dismissed without prejudice as to Respondent Lawrence Shender, for lack of service of process.

AWARD

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

1. Claimants' claims are dismissed, without prejudice, in their entirety as to the remaining Respondent, Lawrence Shender.
2. Any and all relief not specifically addressed herein is denied.

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	= \$75.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Citicorp Investment Services, Inc. is a party.

Member surcharge = \$300.00

Forum Fees and Assessments

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

One (1) Pre-hearing session with the sole arbitrator @ \$250.00	= \$250.00
Pre-hearing conference: April 29, 2002 1 session	
Total Forum Fees	= \$250.00

1. The Arbitrator has assessed \$62.50 of the forum fees jointly and severally against Claimants.
2. The Arbitrator has assessed \$62.50 of the forum fees against Respondent CIS.
3. The Arbitrator has assessed \$62.50 of the forum fees against Respondent Shender.
4. The Arbitrator has assessed \$62.50 of the forum fees against Respondent Groton.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 75.00
Forum Fees	= \$ 62.50
Total Fees	= \$137.50
Less payments	= \$475.00
Refund Previously Paid to Claimants	= \$337.50

2. Respondent CIS is solely liable for:

Member Fees	= \$300.00
Forum Fees	= \$ 62.50
Total Fees	= \$362.50
Less payments	= \$550.00
Refund Previously Paid to CIS	= \$187.50

3. Respondent Shender is solely liable for:

Forum Fees	= \$ 62.50
Total Fees	= \$ 62.50
Less payments	= \$ 62.50
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent Groton is solely liable for:

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<u>Forum Fees</u>	= \$ 62.50
<u>Total Fees</u>	= \$ 62.50
<u>Less payments</u>	= \$ 62.50
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

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

ARBITRATOR

Richard A. Dice, Esq.

Sole Public Arbitrator

Concerning Arbitrator's Signature

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.



Richard A. Dice, Esq.
Sole Public Arbitrator

6-25-04
Signature Date

June 30, 2004

Date of Service (For NASD Dispute Resolution use only)