

Award
NASD Dispute Resolution

COPY

In the Matter of the Arbitration Between:

Richard J. Benci and Debra A. Benci, Claimants v. Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., John P. Rudningen, and Donald T. Davis, Respondents

Case Number: 01-01121

Hearing Site: San Diego, California

REPRESENTATION OF PARTIES

For Claimants:

Virginia H. Gaburo, Esq.
Virginia H. Gaburo & Associates
San Diego, California

For Respondents:

Paul J. Schumacher, Esq.
Esther E. Cho, Esq.
Keesal, Young & Logan
Long Beach, California

CASE INFORMATION

Statement of Claim filed: March 1, 2001

Claimant Richard J. Benci's Uniform Submission Agreement signed: February 19, 2001

Claimant Debra A. Benci's Uniform Submission Agreement signed: February 19, 2001

Joint Statement of Answer filed by Respondents Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., John P. Rudningen, and Donald T. Davis: April 30, 2001

Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc.'s Uniform Submission Agreement signed: April 30, 2001

Respondent John P. Rudningen's Uniform Submission Agreement signed: June 20, 2001

Respondent Donald T. Davis' Uniform Submission Agreement signed: July 9, 2001

CASE SUMMARY

Claimants alleged violations of state and federal securities laws, unsuitability, common law fraud, intentional and negligent misrepresentation, breach of contract, breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, gross negligence and incompetence. The dispute involved the purchase and/or sale of MyPoints.com stock.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim.

RELIEF REQUESTED

Claimants requested actual and consequential damages in the amount of \$447,904.00, punitive damages in the amount of \$300,000.00, arbitration costs, attorneys' fees, expert fees, prejudgment interest, and other and further relief as the Panel deems just and proper.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety, and that all costs be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

On October 3, 2002, Claimants Richard J. Benci and Debra A. Benci and Claimant's counsel, Virginia H. Gaburo, signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On October 10, 2002, Respondents Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., John P. Rudningen, and Donald T. Davis' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

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

- 1) Respondents Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. and John P. Rudningen are liable to and shall pay Claimants Richard J. Benci and Debra A. Benci \$149,292.00 in compensatory damages (includes interest).
- 2) Claimants' request for punitive damages is denied.
- 3) Respondent Donald T. Davis is dismissed with prejudice.
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Donald T. Davis' registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Donald T. Davis must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 5) The parties shall bear their respective costs, including attorney's fees.
- 6) All other relief requested and not expressly granted is denied.

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	= \$ 375.00
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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 Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	= \$ 3,500.00
Total Member Fees	= \$ 6,100.00

Adjournment Fees

The following adjournment fees are assessed:

Hearing Dates, June 26, 2002 – June 28, 2002, stipulated adjournment requested by all Parties	= \$ 1,200.00
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Forum Fees and Assessments

The Arbitrator/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/Panel. The following fees are assessed:

(2) Pre-hearing conference sessions with the Chair @ \$ 450.00/session	= \$ 900.00
Pre-hearing conference: December 4, 2002	1 session
May 15, 2002	1 session
(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: February 11, 2002	1 session
November 18, 2002	1 session
(11) Hearing sessions @ \$1,200.00/session	= \$13,200.00
Hearings: May 20, 2003	2 sessions
May 21, 2003	2 sessions
May 22, 2003	2 sessions
July 9, 2003	2 sessions
July 10, 2003	3 sessions

Total Forum Fees	= \$16,500.00
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The Panel assessed \$16,500.00 of the forum fees jointly and severally to Respondents Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. and John P. Rudningen.

Fee Summary

1. Claimants Richard J. Benci and Debra A. Benci are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
<u>Adjournment Fee</u>	= \$ 600.00
Total Fees	= \$ 975.00
<u>Less payments</u>	= \$(1,575.00)
Refund Due Claimants	= \$(600.00)

2. Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. is charged with the following fees and costs:

Member Fees	= \$ 6,100.00
<u>Less payments</u>	= \$(6,100.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. and John P. Rudningen are charged jointly and severally with the following fees and costs:


Forum Fees	= \$16,500.00
<u>Adjournment Fee</u>	= \$ 600.00
Total Fees	= \$17,100.00
Less payment by Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc.	= \$(569.75)
Balance Due NASD Dispute Resolution	= \$16,530.25

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

William R. Newsome, Esq.	-	Public Arbitrator, Presiding Chair
Russ L. Olson	-	Public Arbitrator
John H. Knight, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


William R. Newsome, Esq.
Chair, Public Arbitrator

7/24/03
Signature Date

Russ L. Olson
Public Arbitrator

Signature Date

John H. Knight, Jr.
Non-Public Arbitrator

Signature Date

7/25/03
Date of Service

William R. Newsome, Esq.
Chair, Public Arbitrator



Russ L. Olson
Public Arbitrator

John H. Knight, Jr.
Non-Public Arbitrator

Signature Date

7-22-03

Signature Date

Signature Date

7/25/03
Date of Service

Consent to Release Information

Name of Person Releasing Information

Address of Person Releasing Information

City, State, and Zip

Name of Person Receiving Information

Address of Person Receiving Information

Name of Person Releasing Information

Address of Person Releasing Information

City, State, and Zip

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Date of Release