

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

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In the Matter of the Arbitration Between:

Michael Koch, (Claimant) v. Salomon Smith Barney, Inc., and Edward Reyman, (Respondents)

and

Franz Koch, (Claimant) v. Salomon Smith Barney, Inc., and Edward Reyman, (Respondents)

Case Number: 01-01141 (consolidated with 01-01143)

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants Michael Koch, ("Michael") and Franz Koch (Franz): Mark Chinitz, Esq., and Gerard A. Riso, Esq., Stein Riso Mantel, LLP, New York, NY.

Respondent Salomon Smith Barney, Inc., ("Salomon"): Victor A. Machcinski, Jr., Esq., Director and Associate General Counsel, Salomon Smith Barney Inc., New York, NY.

Respondent Edward Jon Reyman, ("Reyman"): Ruthann G. Niosi, Esq., Law Offices of Ruthann G. Niosi, Esq., P.C., New York, NY.

**CASE INFORMATION**

**01-01141**

Statement of Claim filed on or about: March 7, 2001.

Michael signed the Uniform Submission Agreement: January 3, 2001.

Joint Statement of Answer filed by Respondents: May 1, 2001.

Salomon signed the Uniform Submission Agreement: May 1, 2001.

Reyman did not sign a Uniform Submission Agreement.

**01-01143**

Statement of Claim filed on or about: March 7, 2001.

Franz signed the Uniform Submission Agreement: January 3, 2001.

Koch filed Answer to Salomon's Counterclaim on June 20, 2001.

Joint Statement of Answer filed by Respondents: June 12, 2001.

Salomon signed the Uniform Submission Agreement: June 12, 2001.

Reyman did not sign the Uniform Submission Agreement

### CASE SUMMARY

01-01141

Claimant Michael asserted the following causes of action: Reyman recklessly and repeatedly exposed Michael's account to unsuitable risks by taking, huge, unauthorized positions in highly volatile options that put Michael's equity unduly at risk; Salomon failed to adequately supervise Reyman and did not have any safeguards against Reyman's unauthorized trading in options in Michael's account; at no time did Salomon make any inquiry of Michael to confirm that he understood and was satisfied with Reyman's trading in options in Michael's account; Salomon failed to provide Michael with timely status reports concerning the value of the account, or the value or risk of the options in the account that Reyman was purchasing; at all times Salomon failed to supervise Reyman, thereby concealing the unauthorized trading from Michael until Michael's losses already had been realized, and increasing the risk of such unauthorized trading to Michael; and during the period from in or about October 1998 through December 1998, Michael suffered losses caused by the wrongful activities of Salomon and Reyman ("Respondents"). Michael's claim involved the securities of Yahoo, Inc., AOL, ANQ, DLQ, LU, NKA, QWA, TBR, YHQ, YHU, ZQN, SPQ, and various other securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Michael's factual allegations are inconsistent with the Answer, they are also denied in their entirety; all of Michael's claims against Respondents are contrived and frivolous; the Statement of Claim fails to state any cause of action against Respondents upon which relief can be granted; Salomon exercised appropriate diligence in its supervision of Reyman in Michael's accounts, and at all times acted in accordance with proper brokerage procedure and industry rules and regulations in that regard; Michael maintained securities accounts and represented to Salomon that he had investment experience prior to the time that he opened his Salomon accounts; at all relevant times, Michael had or should have had full knowledge of all material facts concerning the investments he made, including the nature of the investments as well as the associated risks; the investment decisions at issue were, in all respects, the decisions of Michael; to the extent there was any loss or diminution in the value of his Salomon accounts, such loss or diminution was the result of unforeseen market fluctuations or other events over which Respondents had no control, and was within the risk that Michael knowingly and willingly assumed; the damages allegedly suffered by Michael were not proximately caused by any act or recommendation attributable to Respondents; instead, such damages, if any were proximately caused by intervening or superseding causes over which Respondents had no control; Michael's claims are barred because, to the extent representations were made regarding investments, they were merely expressions of opinion, not material fact, and as such are not actionable; Michael directed and authorized all transactions made in his accounts; immediately after purchases or sales were made, Michael received transactional confirmations and monthly statements advising him to contact the branch immediately if he had any objections to the transactions; the claims are barred by the doctrines of laches, waiver, estoppel and ratification; Michael's claims, in whole or in part, are time-barred; Michael's comparative fault, lack of diligence and failure to manage his account reasonably

and responsibly bars any recovery of damages herein; Michael failed to mitigate his damages; and Michael is not entitled to attorneys' fees pursuant to applicable state law since there is no provision therefore in the agreement to arbitrate.

01-01143

Claimants asserted the following causes of action: unauthorized trading; inappropriate trading; churning; Reyman made trades in high risk and speculative options without the authorization of Franz; Reyman traded heavily in options in Franz's account, without Franz's knowledge; the result of such unauthorized, speculative trading was that all the equity in Franz's account was lost; Reyman churned Franz's account, knowingly and recklessly engaging in excessive "in and out" trading of options, which was unauthorized by Franz; Reyman's unauthorized, reckless and repeated selling of America Online Inc. options by Reyman caused massive losses to Franz's account and contributed to the total loss of Franz's equity therein; at all times, Salomon failed to supervise Reyman, thereby concealing the unauthorized trading from Franz until after his massive losses already had been realized. Franz's claim involved the stocks of America Online, Inc., Yahoo, Inc., ANQ, CYQ, DLQ, NKA, YHQ, YHU, ZQN, SPQ, and various other securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses: Franz's claims in this matter are contrived, reckless and totally without merit; the Statement of claim is factually wrong and materially misleading; the Statement of Claim fails to state any cause of actions against Respondents upon which relief can be granted; Salomon exercised appropriate diligence in its supervision of Reyman in regards to Franz's account, and at all times acted in accordance with proper brokerage procedure and industry rules and regulations in that regard; at all relevant times, Franz had or should have had full knowledge of all material facts concerning the investment decisions at issue were, in all respects, the decisions of Franz; to the extent there was any loss or diminution in the value of his Salomon account, such loss or diminution was the result of unforeseen market fluctuations or other events over which Respondents had no control, and was within risk that Franz knowingly and willingly assumed; the damages alleged suffered by Franz were not proximately caused by any act or recommendation attributable to Respondents; such damages, if any, were proximately caused by intervening or superseding causes over which Respondents had no control; Franz's claims are barred because, to the extent representations were made regarding investments, there were merely expressions of opinion and not material fact, as such are not actionable; Franz directed and authorized all transactions made in his account; immediately after purchases or sales were made, Franz received transactional confirmations and monthly statements advising him to contact the branch immediately after purchases or sales were made; the claims are barred by doctrines of laches, waiver, estoppel and ratification; Franz's comparative fault, lack of diligence, and failure to manage his account reasonably and responsibly bars any recovery of damages herein; Franz failed to mitigate his damages; and Franz is not entitled to attorneys' fees pursuant to applicable state law since there is no provision in the agreement to arbitrate.

In its Counterclaim, Salomon asserted the following cause of action: uncollected debit balance.

In his Answer to the Counterclaim, Franz denied the allegations made in Salomon's Counterclaim to the extent it seeks to attribute any liability to Franz and asserts the following defenses: any margin debit balance in Franz's account with Salomon was caused by the actions of Respondents and not by Franz; Salomon is precluded from any recovery on the Counterclaim by reason of Salomon's and Reyman's own wrongful conduct; from the time said margin debit balance in Franz's account with Salomon was allegedly incurred, through and until the filing of the Joint Counterclaim in this arbitration, Salomon failed to demand payment of the same; by reason of the forgoing, the Counterclaim is barred by the doctrines of laches, waiver and estoppel; any alleged margin debit balance in Franz's account with Salomon was not proximately caused by Franz, but by Salomon's and Reyman's unauthorized and unsupervised trading of Franz's account; and the Counterclaim, in whole or in part, is time-barred.

**RELIEF REQUESTED**

**01-01141**

Michael requested that the arbitration panel make an award in Michael's favor and take all other and further steps consistent with the supervisory responsibilities of the NASD; plus the amount which would have been earned during the period between October 1998 and December 1998, if Michael's account had not been traded by Respondents without authorization, but had been traded in a suitable manner only by Michael; plus the amount of Respondents' commissions, fees and mark-ups, plus in an amount to be determined, but in no event less than \$500,00.00, with interest; attorneys' fees; all costs; and disbursements incurred in this proceeding.

Respondents requested that the panel dismiss the Statement of Claim in its entirety, that as a result of the groundless nature of such claims Respondents be awarded their fees and expenses, including forum fees and all other costs of this proceeding, and that NASD's Central Registration Depository record of Reyman be expunged with respect to Michael's claims.

**01-01143**

Franz requested that the arbitration panel make an award in Franz's favor and take all other and further steps consistent with the supervisory responsibilities of the NASD; plus the amount which would have been earned during the period between October 1998 and December 1998, if Franz's account had not been traded by Respondents without authorization, but had been traded in a suitable manner only by Franz; plus the amount of Respondents' commissions, fees and mark-ups, plus in an amount to be determined, but estimated at this time to be \$700,00.00, with interest; attorneys' fees; all costs; and disbursements incurred in this proceeding. Franz also requested that Salomon's Counterclaim be dismissed in its entirety.

Respondents requested that the panel dismiss the Statement of Claim in its entirety, that as a result of the groundless nature of such claims Respondents be awarded their fees and expenses, including forum fees and all other costs of this proceeding, and that NASD's Central Registration Depository record of Reyman be expunged with respect to Franz's claims.

Salomon requested damages in an amount to be determined at the hearing of the matter, but in any event no less than \$41,710.00, plus interest thereon from and after November 24, 1998.

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

On July 16, 2001, in response to Respondents' Motion to Consolidate dated June 19, 2001, Claimants consented to the consolidation of case numbers 01-01141 and 01-01143.

By letter dated February 4, 2003, Counsel for Claimants Michael Koch and Franz Koch, and Counsel for Respondent Edward Reyman indicated that Michael Koch and Franz Koch withdrew all of their respective claims with prejudice as against Respondent Edward Reyman, preserving all claims against Respondent Salomon Smith Barney, Inc., including claims based on *respondeat superior*, vicarious and derivative liability; and Respondent Edward Reyman withdrew all claims against Claimant Michael Koch and Franz Koch with prejudice, including his request for attorneys' fees with respect to the withdrawal of any suitability claim, and that said withdrawals are considered to be dismissals, and said dismissals are final and with prejudice effective as of the date of the letter.

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 and shall pay to Claimant, Michael Koch, the sum of \$135,000.00 as compensatory damages, plus interest at the rate of 7% beginning from November 17, 1998 until the award is paid in full.
2. Respondent Salomon is liable and shall pay to Claimant, Franz Koch, the sum of \$220,000.00 as compensatory damages, plus interest at the rate of 7% beginning from November 17, 1998 until the award is paid in full.
3. Respondent Salomon's Counterclaim is hereby denied.
4. All other requests for relief are hereby 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:

01-01141

Initial claim filing fee = \$ 300.00

01-01143

Initial claim filing fee = \$ 375.00

Counterclaim = \$ 1,000.00

**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.

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Member surcharge = \$ 1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$ 4,500.00

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Member surcharge = \$ 2,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 22, 23, & 24, 2003, adjournment by Claimants WAIVED

**Forum Fees and Assessments**

The Panel assesses forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00 = \$ 900.00

Pre-hearing conferences: August 5, 2002 1 session

December 20, 2002 1 session

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00

Pre-hearing conference: May 6, 2002 1 session

Twenty (20) Hearing sessions with Panel x \$1,200.00 = \$24,000.00

Hearing Dates: February 5, 2003 2 sessions

February 6, 2003 2 sessions

February 7, 2003 2 sessions

February 12, 2003 2 sessions

February 13, 2003 2 sessions

February 14, 2003 2 sessions

February 20, 2003 2 sessions

February 21, 2003	2 sessions
March 5, 2003	2 sessions
March 13, 2003	2 sessions
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Total Forum Fees	= \$26,100.00

1. The Panel has assessed \$13,050.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$13,050.00 of the forum fees against Respondent Salomon.

**Fee Summary**

1. Claimant, Michael Koch is solely liable for:	
<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 0.00
2. Claimant, Franz Koch is solely liable for:	
<u>Initial Filing Fee</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 375.00
Balance Due NASD Dispute Resolution	= \$ 0.00
3. Claimants are jointly and severally liable for:	
<u>Forum Fees</u>	= \$13,050.00
<u>Total Fees</u>	= \$13,050.00
<u>Less payments</u>	= \$ 2,325.00
Balance Due NASD Dispute Resolution	= \$10,725.00
4. Respondent, Salomon Smith Barney, Inc. is solely liable for:	
Filing Fee	= \$ 1,000.00
Member Fees	= \$ 8,600.00
<u>Forum Fees</u>	= \$13,050.00
<u>Total Fees</u>	= \$22,650.00
<u>Less payments</u>	= \$ 9,050.00
Balance Due NASD Dispute Resolution	= \$13,600.00

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

**ARBITRATION PANEL**

Charles A. Crocco, Esq.	-	Public Arbitrator, Presiding Chair
Paul T. Green	-	Public Arbitrator
Romaine L. Gardner, Esq.	-	Non-Public Arbitrator

**Consenting Arbitrators' Signatures**

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 in which is my award.

  
Charles A. Crocco, Esq.  
Public Arbitrator, Presiding Chairperson

May 22, 2002  
Signature Date

Paul T. Green  
Public Arbitrator

Signature Date

Romaine L. Gardner, Esq.  
Non-Public Arbitrator

Signature Date

May 23, 2003

Date of Service (For NASD Dispute Resolution use only)



**ARBITRATION PANEL**


Charles A. Crocco, Esq.	-	Public Arbitrator, Presiding Chair
Paul T. Green	-	Public Arbitrator
Romaine L. Gardner, Esq.	-	Non-Public Arbitrator

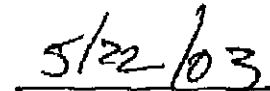
**Concurring Arbitrators' Signatures**

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 is which is my award.

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Charles A. Crocco, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
Paul T. Green  
Public Arbitrator

  
Signature Date

\_\_\_\_\_  
Romaine L. Gardner, Esq.  
Non-Public Arbitrator

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

May 23, 2003

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Charles A. Crocco, Esq.	-	Public Arbitrator, Presiding Chair
Paul T. Green	-	Public Arbitrator
Romaine L. Gardner, Esq.	-	Non-Public Arbitrator

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Charles A. Crocco, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

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Paul T. Green  
Public Arbitrator

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



\_\_\_\_\_  
Romaine L. Gardner, Esq.  
Non-Public Arbitrator

5/22/03  
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Signature Date

May 23, 2003

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Date of Service (For NASD Dispute Resolution use only)