

**Award  
NASD**

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In the Matter of the Arbitration Between:

Name of the Claimant  
Joseph Litner, M.D., Ph.D

Case Number: 01-01317

Names of the Respondents  
Salomon Smith Barney Inc.  
Frank Melia  
Glenn H. Fischer

Hearing Site: New Orleans, LA

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**REPRESENTATION OF PARTIES**

For Joseph Litner, M.D., Ph.D, hereinafter referred to as "Claimant": Philip Montelepre, Esq., New Orleans, LA.

For Respondents Salomon Smith Barney Inc. ("SSB") and Frank Melia ("Melia"): Alejandro Schwed, Senior Vice President, Associate General Counsel, SSB, New York, NY.

Respondent Glenn H. Fischer ("Fischer") appeared pro se.

**CASE INFORMATION**

Statement of Claim filed on or about: March 16, 2001.

Amended Statement of Claim filed on or about: September 29, 2001.

Reply to Statement of Answer filed by Claimant on or about: May 23, 2001.

Claimant signed the Uniform Submission Agreement: March 12, 2001.

Statement of Answer filed by Respondents SSB and Melia on or about: May 15, 2001.

Respondent SSB signed the Uniform Submission Agreement: May 14, 2001.

Respondent Melia signed the Uniform Submission Agreement: June 18, 2001.

Claimant's Motion to File First Supplemental Statement of Claim in Arbitration Adding Additional Respondent, Glenn H. Fischer ("Motion to Amend") filed on or about: February 11, 2002.

Respondent Fischer did not file a Statement of Answer or an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: misrepresentation; fraud; unsuitability; negligence; unauthorized trading; violation of the Securities Act of 1933, the Securities Exchange Act of 1934, Rules 401 and 405 of the New York Stock Exchange, and the NASD Rules of Fair Practice; breach of fiduciary duty; and, breach of the covenant of Good Faith and Fair Dealing. The causes of action relate to the purchase of Targets Trust VII Targeted Growth Enhanced Terms Securities in Claimant's account.

Unless specifically admitted in their Answer, Respondents SSB and Melia denied the allegations made in the Statement of Claim and asserted various affirmative defenses including: there was no misrepresentation; Claimant was provided with accurate information about the security; and, Respondents acted professionally and ethically at all times.

### **RELIEF REQUESTED**

Claimant requested total damages of \$200,000.00 consisting of compensatory damages of \$100,000.00 plus interest, capital cost of interest on Claimant's line of credit, attorneys' fees of \$15,000.00, costs, and general damages.

Respondents SSB and Melia requested dismissal of the Statement of Claim and that all costs be assessed against Claimant.

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

On or about April 3, 2002, the Panel issued an order which granted Claimant's Motion to Amend.

Respondent Fischer did not file with NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having appeared at the hearing, is bound by the determination of the undersigned arbitrators (the "Panel") on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

The Panel assesses a fine of \$14,400.00 to be paid by Respondent SSB to Claimant.

Respondents are not liable on all claims.

Claimant's claims against Respondents Melia and Fischer are dismissed, with prejudice.

The parties are responsible for their own attorneys' fees and costs.

Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$300.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$600.00

Hearing process fee = \$2,500.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournment were granted in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

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

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

One (1) Pre-hearing session with Panel @ \$1,125.00 = \$1,125.00

Pre-hearing conference: January 31, 2002 1 session

Three (3) Hearing sessions @ \$1,125.00 = \$3,375.00

Hearing Dates: June 19, 2002 1 session

June 20, 2002 2 sessions

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Total Forum Fees = \$4,500.00

The Panel has assessed \$2,250.00 of the forum fees to Claimant.  
The Panel has assessed \$2,250.00 of the forum fees to Respondent SSB.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**FEE SUMMARY**

Claimant is solely liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$2,250.00
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Total Fees	= \$2,550.00
Less payments	= \$1,425.00
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Balance Due NASD	= \$1,125.00

Respondent SSB is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$2,250.00
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Total Fees	= \$6,850.00
Less payments	= \$4,600.00
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Balance Due NASD	= \$2,250.00

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

**ARBITRATION PANEL**

Diane B. Elkins	-	Public Arbitrator, Presiding Chair
Carlie M. Kahn	-	Public Arbitrator
Charles E. Melancon, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

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Diane B. Elkins  
Public Arbitrator, Presiding Chair

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Signature Date

/s/

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Carlie M. Kahn  
Public Arbitrator

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Signature Date

/s/

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Charles E. Melancon, Jr.  
Non-Public Arbitrator

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Signature Date

July 31, 2002

Date of Service (For NASD office use only)

NASD Dispute Resolution

Arbitration No. 01-01317

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Concurring Arbitrators' Signatures

Diane Elkins

Diane B. Elkins

Public Arbitrator, Presiding Chair

7/30/02

Signature Date

Carlie M. Kahn

Public Arbitrator

Signature Date

Charles E. Melancon, Jr.

Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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NASD DISPUTE RESOLUT

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NASD Dispute Resolution

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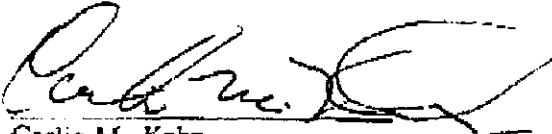
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Concurring Arbitrators' Signatures

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Diane B. Elkins

Public Arbitrator, Presiding Chair

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Signature Date



Carl M. Kahn

Public Arbitrator

7/29/02  
Signature Date

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Charles E. Melancon, Jr.

Non-Public Arbitrator

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