

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

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In the Matter of the Arbitration Between:

George Clifford White and Augusta White, individually and as husband and wife; and George Clifford White, as trustee of the George C. White Trust U/A/D March 30, 1993, Claimants v. Salomon Smith Barney Inc., a corporation; Donna S. White, as Personal Representative of the Estate of Peter C. White; Peter Colin White, Jr., an individual; and Donna S. White, Peter Colin White, Jr. and Keith Aebischer, as trustees of the Peter C. White Trust, Respondents

Case Number: 01-02093

Hearing Site: San Francisco, California

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Nature of the Dispute: Customers vs. Member, Non-Members and Associated Person

**REPRESENTATION OF PARTIES**

For Claimants:

Mark L. Musto, Esq.  
Berkeley, California

For Respondents Salomon Smith Barney Inc. and  
Peter Colin White, Jr.:

Cameron Stout, Esq.  
Keesal, Young & Logan  
San Francisco, California

For Respondents Donna S. White, as  
Personal Representative of the Estate of  
Peter C. White; and Donna S. White,  
Peter Colin White, Jr. and Keith Aebischer,  
as trustees of the Peter C. White Trust:

David J. Romanski, Esq.  
Piper Rudnick LLP  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: April 24, 2001

Claimants' Uniform Submission Agreement signed: April 24, 2001

Joint Statement of Answer filed by Respondents, Salomon Smith Barney Inc., also known as Citigroup Global Markets, Inc. ("Smith Barney") and Peter Colin White, Jr.: July 27, 2001

Joint Statement of Answer filed by Respondents Donna S. White, as Personal Representative of the Estate of Peter C. White; and Donna S. White, Peter Colin White, Jr. and Keith Aebischer, as trustees of the Peter C. White Trust: July 27, 2001

Respondent Estate of Peter C. White's Uniform Submission Agreement signed: July 9, 2001

Respondent Peter C. White Trust's Uniform Submission Agreement signed: July 9, 2001

### **CASE SUMMARY**

Claimants alleged the following claims with respect to investments in various unspecified securities: 1) Fraud and Deceit against all Respondents; 2) Constructive Fraud; 3) Breach of Fiduciary Duty against all Respondents; 4) Negligent Supervision against Smith Barney; 5) Breach of Contract against Smith Barney; 6) Elder Financial Abuse - Welf. & Inst. Code Section 15610.30 - Claimant George Clifford White against all Respondents; 7) Accounting against all Respondents; and 8) Constructive Trust against all Respondents.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondents also asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested:

1. Compensatory, general and special damages of \$1,800,000.00 or according to proof;
2. Punitive damages of \$3,600,000.00 or according to proof;
3. Statutory damages;
4. Attorney's fees;
5. Costs;
6. A full true and complete accounting between the parties;
7. For imposition of a constructive trust on any assets of Claimants in the possession of Respondents, and the proceeds thereof;
8. Interest;
9. Such other and further relief as the Panel deems just and proper.

Respondents Smith Barney and Peter Colin White, Jr. requested that the Panel:

1. Dismiss Claimants' Statement of Claim in its entirety, with prejudice;
2. Expunge this matter from Peter Colin White, Jr.'s record;
3. Assess the costs, fees and disbursements associated with this matter and Respondents Smith Barney's and Peter Colin White, Jr.'s defense of this matter against Claimants; and
4. Render any other ruling which the Panel deems appropriate.

Respondents Donna S. White, as Personal Representative of the Estate of Peter C. White; and Donna S. White, Peter Colin White, Jr. and Keith Aebischer, as trustees of the Peter C. White Trust requested that the Panel:

1. Dismiss Claimants' Statement of Claim in its entirety;
2. Assess costs of this proceeding, including the representative respondents' reasonable attorney fees, against Claimants; and
3. Render such other relief as is just and proper.

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

On or about September 1, 2000, the above-captioned dispute was ordered to arbitration by the Superior Court of the State of California for the County of San Francisco.

Respondents Smith Barney and Peter Colin White, Jr. did not file with NASD Dispute Resolution ("NASD-DR") properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimants' Claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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

- 1) All claims by Claimants, including the claims for punitive damages, are dismissed.
- 2) The Panel recommends the expungement of all reference to this arbitration from Respondent Peter Colin White, Jr.'s registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Peter Colin White, Jr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) The Panel recommends the expungement of all references, if any, to this arbitration from Keith Aebischer's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Keith Aebischer must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

- 4) Each party shall bear its own costs, including attorney's fees.
- 5) All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$600.00
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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, Smith Barney is a party and the following fees are assessed:

Member Surcharge	= \$3,000.00
Pre-Hearing Process Fee	= \$ 600.00
<u>Hearing Process Fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,600.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

The Panel waived the adjournment fee in connection with Claimants' request to adjourn the October 31-November 8, 2002 hearing dates.

#### **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/Panel. The following fees are assessed:

(4) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	=	\$4,800.00
Pre-hearing conferences:		
March 14, 2002	1 session	
October 18, 2002	1 session	
February 24, 2003	1 session	
December 18, 2003	1 session	

(13) Hearing sessions @ \$1,200.00/session = \$15,600.00

Hearings:	November 15, 2004	2 sessions
	November 16, 2004	2 sessions
	November 17, 2004	2 sessions
	November 18, 2004	2 sessions
	November 19, 2004	2 sessions
	December 8, 2004	1 session
	December 9, 2004	1 session
	December 10, 2004	1 session

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**Total Forum Fees** = **\$20,400.00**

The Panel assessed \$15,300.00 in forum fees jointly and severally to Claimants.

The Panel assessed \$5,100.00 in forum fees jointly and severally to Respondents Smith Barney, Estate of Peter C. White, Peter Colin White, Jr., and Peter C. White Trust.

#### **Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 600.00
<u>Forum Fees</u>	= \$ 15,300.00
Total Fees	= \$ 15,900.00
<u>Less Payments</u>	= \$( 1,800.00)
Balance Due NASD-DR	= \$ 14,100.00

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

Member Fees	= \$ 8,600.00
<u>Less Payments</u>	= \$( 8,600.00)
Balance Due NASD-DR	= \$ 0.00

3. Respondents Smith Barney, Estate of Peter C. White, Peter Colin White, Jr., and Peter C. White Trust are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 5,100.00
<u>Less Payments</u>	= \$( 0.00)
Balance Due NASD-DR	= \$ 5,100.00

**ARBITRATION PANEL**

Robert L. Liu	-	Public Arbitrator, Presiding Chair
E. Carol Cohen	-	Public Arbitrator
James R. Dickson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Robert L. Liu  
Chair, Public Arbitrator

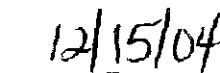
  
Signature Date

\_\_\_\_\_  
E. Carol Cohen  
Public Arbitrator

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

\_\_\_\_\_  
James R. Dickson  
Non-Public Arbitrator

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

  
Date of Service

**ARBITRATION PANEL**

Robert L. Liu  
E. Carol Cohen  
James R. Dickson

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Robert L. Liu  
Chair, Public Arbitrator



E. Carol Cohen  
Public Arbitrator

Signature Date

12/15/04

Signature Date

James R. Dickson  
Non-Public Arbitrator

Signature Date

11/15/04 through 11/19/04  
Date of Service 12/8/04 through  
12/15/04 12/16/04

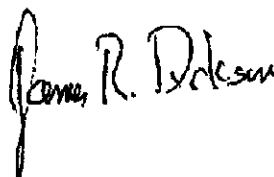
Robert L. Liu  
Chair, Public Arbitrator

Signature Date

E. Carol Cohen  
Public Arbitrator

Signature Date

James R. Dickson  
Non-Public Arbitrator

James R. Dickson

Signature Date

12-14-04

12/15/04  
Date of Service