

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Angela Freibaum  
David Freibaum

Case Number: 01-02581

Names of the Respondents

Salomon Smith Barney, Inc.  
n/k/a CitiGroup Global Markets, Inc.,  
Mary McEachern and  
Andrew Kistler

Hearing Site: Washington, D.C.

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**REPRESENTATION OF PARTIES**

Claimants, Angela Freibaum and David Freibaum, hereinafter collectively referred to as "Claimants", were represented by Jay Liner, Securities Recovery, Inc., Baltimore, Maryland.

Respondents, Salomon Smith Barney, Inc. n/k/a CitiGroup Global Markets, Inc. ("SSB"), Mary McEachern ("McEachern") and Andrew Kistler ("Kistler"), hereinafter collectively referred to as "Respondents", were represented by Joseph A. Ingrisano, Esq., Kutak Rock, LLP, Washington, D.C.

**CASE INFORMATION**

Statement of Claim filed on or about May 15, 2001.

Claimants signed the Uniform Submission Agreement on May 10, 2001.

Statement of Answer filed by Respondents on August 10, 2001.

A representative of Respondent SSB signed the Uniform Submission Agreement on August 7, 2001.

Respondent McEachern did not file an executed Uniform Submission Agreement.

Respondent Kistler did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: failure to manage the Claimants' accounts; self-dealing; intentional misrepresentation; negligent misrepresentation; churning; violation of Maryland Securities Laws; breach of fiduciary duty; breach of contract; fraud; negligent hiring; *respondeat superior*; and, failure to supervise. The causes of action relate to unspecified securities in Roth and Educational IRAs.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: statutes of limitations; failure to state a claim upon which relief may be granted; failure to mitigate; ratification; waiver; estoppel; laches; and, Respondents acted at all times with reasonable care.

### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$ 361,300.00
Punitive Damages	three times compensatory damages
Interest	unspecified amount
Attorneys' Fees	unspecified amount
Other Costs	unspecified amount

Respondents requested that the Statement of Claim be dismissed in its entirety.

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

Respondent McEachern and Respondent Kistler did not file with NASD Dispute Resolution properly executed submissions to arbitration, but are required to submit to arbitration pursuant to the Code and having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

At the hearing Respondents filed a request for the expungement of Respondent McEachern's and Respondent Kistler's NASD Central Registration Depository ("CRD") record. Claimant responded orally.

### **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. The Claimants' claims are denied in their entirety;
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent McEachern's and Respondent Kistler's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent McEachern and Respondent Kistler must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and,
4. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **FEES**

#### **Filing Fees**

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

Initial claim filing fee = \$ 500.00

**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 persons at the time of the events giving rise to the dispute. Accordingly, Respondent SSB is a party and employed the associated persons.

Member surcharge	= \$ 2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 4,500.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

May 20 – 22, 2002 adjournment by Claimants' request	= \$ 1,200.00
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**Forum Fees and Assessments**

The Panel has assessed 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:

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

Pre-hearing conference: January 22, 2002 1 session

Eleven (11) Hearing sessions @ \$ 1,200.00 = \$13,200.00

Hearing Dates: January 15, 2003 2 sessions  
January 16, 2003 2 sessions  
January 17, 2003 2 sessions  
February 7, 2003 1 session  
March 4, 2003 2 sessions  
March 5, 2003 2 sessions

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Total Forum Fees = \$ 14,400.00

The Panel has assessed \$14,400.00 of the forum fees to Claimants.

**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.

Respondent SSB requested copies of audio transcripts = \$ 195.00

Fee Summary

## 1. Claimants are assessed:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 14,400.00
Total Fees	= \$ 16,100.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 14,675.00

## 2. Respondent SSB is assessed:

Member Fees	= \$ 7,600.00
Administrative Costs	= \$ 195.00
Total Fees	= \$ 7,795.00
Less payments	= \$ 4,795.00
Balance Due NASD Dispute Resolution	= \$ 3,000.00

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

ARBITRATION PANEL

Richard E. Lauziere, CPA

June White Dillard, Esq.

Louis Paul Sitnik

- Public Arbitrator, Presiding Chairperson
- Public Arbitrator, Panelist
- Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signatures

Richard E. Lauziere  
Richard E. Lauziere, CPA  
Public Arbitrator, Presiding Chairperson

4-16-2003  
Signature Date

\_\_\_\_\_  
June White Dillard, Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Louis Paul Sitnik  
Non-Public Arbitrator, Panelist

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


April 16, 2003  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

Richard E. Lauziere, CPA  
Public Arbitrator, Presiding Chairperson

Signature Date

  
Julie White Dillard, Esq.  
Public Arbitrator, Panelist

  
Signature Date

Louis Paul Sitznik  
Non-Public Arbitrator, Panelist

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Public Arbitrator, Presiding Chairperson

Signature Date

June White Dillard, Esq.  
Public Arbitrator, Panelist

Signature Date

Louis P. Sitnik

Louis Paul Sitnik  
Non-Public Arbitrator, Panelist

4/15/03

Signature Date

April 16, 2003

Date of Service (For NASD Dispute Resolution office use only)