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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Donald Domingue

Case Number: 01-03076

Names of the Respondents  
Salomon Smith Barney Inc.  
Sean J. Coughlin

Hearing Site: New Orleans, LA

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Nature of the Dispute: Associated Person vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Donald Domingue, hereinafter referred to as "Claimant": Robert L. Broussard, Esq., Jeffrey A. Ackerman, Esq., and Steven G. Durio, Esq., Durio, McGoffin & Stagg, Lafayette, LA.

For Salomon Smith Barney Inc. ("SSB") and Sean J. Coughlin ("Coughlin"), hereinafter collectively referred to as "Respondents": Thomas A. Roberts, Esq. and Catherine E. Garas, Esq., McGlinchey Stafford, New Orleans, LA.

**CASE INFORMATION**

Statement of Claim filed on or about: June 11, 2001.

Claimant signed the Uniform Submission Agreement: May 31, 2001.

Statement of Answer filed by Respondents on or about: May 28, 2004.

Respondent SSB signed the Uniform Submission Agreement: February 25, 2002.

Respondent Coughlin signed the Uniform Submission Agreement: December 19, 2001.

Claimant's Motion for Leave to File Amending and Supplemental Statement of Claim and Supplemental Statement of Claim ("Motion to Amend") filed on or about: December 1, 2004.

Respondents' Response to Claimant's Motion to Amend filed on or about: April 21, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: detrimental reliance; unfair trade practices; unjust enrichment; penalty wages; and, attorney malpractice. The causes of action relate to the termination of Claimant's employment with Respondent SSB.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, as amended, and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested compensatory and treble damages of between \$5,000,000.01 and \$10,000,000.00, attorneys' fees, interest, costs, and expungement of Claimant's Form U-5.

Respondents requested dismissal of the Statement of Claim, that costs and attorneys' fees be assessed against Claimant, and for such other and further relief that the undersigned arbitrators (the "Panel") deemed just and appropriate.

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

During the evidentiary hearing, the Panel granted Claimant's Motion to Amend.

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, 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:

All claims are dismissed, with prejudice.

The Panel finds that Respondent SSB had just and sufficient cause to terminate Claimant's employment and to give "Job Performance" as the reason on Claimant's Form U-5, irrespective of Claimant's refusal to contribute any payment towards satisfaction of a settlement reached with a third party named Donald Chiasson ("Chiasson Settlement"). The Panel further finds that Respondent SSB's subsequent actions regarding retention of the accounts in Claimant's book of business were in line with normal business practices within the securities industry. Therefore, Claimant's claims of unfair trade practices, unjust enrichment, and penalty wages are dismissed.

With respect to Claimant's claims of attorney malpractice by Respondent Coughlin and ensuing detrimental reliance, the Panel finds the behavior of both Branch Office Manager Andrew Black ("Black") and Respondent Coughlin to have been faulty. Clearly, Black knew early on that Claimant opposed contributing any payment to the Chiasson Settlement, but he did not inform Respondent Coughlin of that, as he should have. Respondent Coughlin should have avoided the problem himself either by instructing Black as to what might give rise to a conflict of interest between Claimant and Respondent Coughlin and should be reported to him, or better yet, by questioning Claimant directly about his intentions regarding participation in any settlement or award to Mr. Chiasson or about any other conditions which might result in a conflict of interest between himself and his client.

Because Claimant ultimately did not participate in the Chiasson Settlement, and because he suffered no other loss directly attributable to Respondent Coughlin's actions or lack thereof, and because the Panel finds that Respondent Coughlin did not act with malice toward Claimant, the Panel finds that whatever error Respondent Coughlin committed is insufficient to justify a finding of attorney malpractice, and therefore, these claims are dismissed as well.

The Panel recommends the expungement of all references to an individual contribution of \$30,000.00 by Donald E. Domingue to the settlement of the customer complaint filed by Donald Chiasson, as NASD Arbitration number 98-03259, from Donald E. Domingue's registration records maintained by the NASD Central Registration Depository ("CRD"). All "individual contribution amount" fields on all impacted Form U4 and Form U5 Customer

Complaint/Arbitration/Civil Litigation Disclosure Reporting Pages (DRPs) that report the Donald Chiasson complaint/arbitration should indicate \$0.00. The comment field (i.e., item 28) on the Form U4 Customer Complaint/Arbitration/Civil Litigation DRP currently states "This case was settled before going to arbitration. The matter was settled for business and economic reasons. Mr. Domingue was dismissed from the case. The matter was settled for less than twenty percent of the claimed damages. Mr. Domingue opposed the settlement and opposed the allocation of \$30,000 to myself - he paid nothing." The sentence that states "Mr. Domingue opposed the settlement and opposed the allocation of \$30,000 to myself - he paid nothing." should be expunged and replaced with the following sentence "Mr. Domingue did not individually contribute to the settlement amount and did not admit any liability to the customer/claimant." Likewise, any similar language on any Form U4 DRPs maintained in "CRD Filing History" that report the Chiasson complaint/arbitration should be expunged and replaced with the above sentence. Further, language in the comment field on any of the Form U5 Customer Complaint/Arbitration/Civil Litigation DRPs that states that Mr. Domingue supported the settlement and/or contributed \$30,000 towards the overall settlement should be expunged and replaced with a sentence identical or similar to that proposed for the relevant Form U4 DRP comment fields. The expungement recommendation is made with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Donald E. Domingue must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all claims for relief not specifically addressed herein, including Claimant's request for treble damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (the "Code"), the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 600.00
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#### **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. Accordingly, Respondent SSB is a member firm and a party.

Member surcharge	= \$3,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$5,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

January 22-24, 2003, adjournment by the parties. The adjournment fee was waived by the Panel.

April 14-16, 2004, adjournment by Claimant. The adjournment fee in the amount of \$1,200.00 was assessed to the Claimant.

December 7-10, 2004, adjournment by Respondents. The adjournment fee was waived by the Panel.

**Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were assessed during these proceedings.

**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 assessed during these proceedings.

**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 a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: December 23, 2002	1 session

Four (4) Pre-hearing sessions with the Panel @ \$1,200.00/session	= \$ 4,800.00
Pre-hearing conferences: March 11, 2002	1 session
August 9, 2002	1 session
August 12, 2002	1 session
January 31, 2005	1 session

Thirteen (13) Hearing sessions @ \$1,200.00/session	= \$15,600.00
Hearing Dates: September 16, 2003	1 session
April 26, 2005	2 sessions
April 27, 2005	2 sessions
April 28, 2005	2 sessions
April 29, 2005	2 sessions
June 23, 2005	2 sessions
June 24, 2005	2 sessions

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Total Forum Fees	= \$20,850.00
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The Panel has assessed the total forum fees of \$20,850.00 to Claimant.

**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 not limited to, additional copies

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Arbitration No. 01-03076

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of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$20,850.00
Total Fees	= \$22,650.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$20,850.00

Respondent SSB is solely liable for:

Member Fees	= \$ 8,600.00
Total Fees	= \$ 8,600.00
Less payments	= \$ 8,600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Kendall P. Hill	- Public Arbitrator, Presiding Chairperson
Alisa Ruth	- Public Arbitrator
Cheryl D. Cassreino	- Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Kendall P. Hill  
Public Arbitrator, Presiding Chairperson

Signature Date

/s/  
Alisa Ruth  
Public Arbitrator

Signature Date

/s/  
Cheryl D. Cassreino  
Non-Public Arbitrator

Signature Date

July 19, 2005  
Date of Service (For NASD Dispute Resolution use only)

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**Arbitration No. 01-03076**  
**Award Page 5 of 5**

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 Public Arbitrator, Presiding Chairperson

7/19/05  
 Signature Date

Alisa Ruth  
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 Public Arbitrator

Signature Date

Cheryl D. Cassreino  
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**NASD Dispute Resolution**  
**Arbitration No. 01-03076**  
**Award Page 3 of 5**

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No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$21,850.00
Total Fees	= \$22,650.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution:	= \$21,850.00

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Public Arbitrator, Presiding Chairperson

Signature Date

  
Alisa Ruth  
Public Arbitrator

7-19-05  
Signature Date

Cheryl D. Cassreino  
Non-Public Arbitrator

Signature Date

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