

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

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In the Matter of the Arbitration Between:

Audrey T. Austin (Claimant) v. Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc., and Brian F. Hayes (Respondents)

Case Number: 01-05521

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Audrey T. Austin ("Claimant") hereinafter referred to as "Claimant": David S. Markum, Esq., Markum, Zusman & Compton, LLP, San Francisco, CA.

Respondents Citigroup Global Markets, Inc., f/k/a Salmon Smith Barney, Inc. ("Citigroup") and Brian F. Hayes ("Hayes") hereinafter collectively referred to as "Respondents": David J. Campbell, Esq., Bressler Amery & Ross, P.C., Florham Park, New Jersey.

**CASE INFORMATION**

Statement of Claim filed on or about: October 17, 2001.  
Amended Statement of Claim filed on or about: June 4, 2004.  
Claimant signed the Uniform Submission Agreement: October 15, 2001.

Joint Answer filed by the Respondents on or about: January 7, 2002.  
Hayes signed the Uniform Submission Agreement: February 6, 2002.  
Citigroup did not file a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action in the Claim and Amended Statement of Claim: breach of fiduciary duty; professional negligence; fraud/material misrepresentations and/or omissions; violation of Rule 10b-5; respondeat superior; and, negligent supervision.

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

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$462,000.00, interest, punitive damages in the amount of \$462,000.00, costs, attorney's fees, and such other relief as the Panel may deem just and proper.

Respondents requested that Claimant's claims be dismissed in their entirety and that this matter be expunged from Hayes' CRD record.

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

Respondent Citigroup did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, is bound by the determination of the Panel on all issues submitted.

In June of 2004, the parties entered into a confidential settlement agreement and requested that this case be removed from NASD Dispute Resolution's docket.

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**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of Respondents for entry of an award, the written stipulation thereto, the Panel hereby grants the motion and enters this award granting the following relief:

1. The claims against Respondents are dismissed with prejudice.
2. Claimant and Respondent Citigroup have entered into a confidential settlement agreement which shall be complied with by the parties.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Brian F. Hayes' 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 Brian F. Hayes must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
4. Any and all relief not specifically addressed herein is 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:

Initial claim filing fee	= \$	375.00
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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 that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Citigroup Global Markets, Inc., is a party.

Member surcharge	= \$ 2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

February 18, 19, 20, 21, 2003 adjournment by the parties = Waived

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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 conference sessions with Panel @ \$1,200.00 per session  
= \$ 2,400.00

Pre-hearing conferences: June 10, 2002 1 session  
November 25, 2002 1 session

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Total Forum Fees = \$ 2,400.00

1. The Panel has assessed \$800.00 of the forum fees against the Claimant.
2. The Panel has assessed \$800.00 of the forum fees against SSB.
3. The Panel has assessed \$800.00 of the forum fees against the Hayes.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,575.00
Less payments	= \$ 2,197.88
Refund previously issued to the Claimant	= \$ 622.88

*Pursuant to Rule 10332 of the Code of Arbitration Procedure, NASD-Dispute Resolution shall retain the hearing session deposit because NASD-DR was notified that the case was settled within eight days of the first scheduled hearing.*

2. Citigroup is solely liable for:

Member Fees	= \$ 6,100.00
Forum Fees	= \$ 800.00
Total Fees	= \$ 6,900.00

<u>Less payments</u>	= \$ 8,472.88
Refund previously issued to Citigroup	= \$ 1,572.88

3. Hayes is solely liable for:

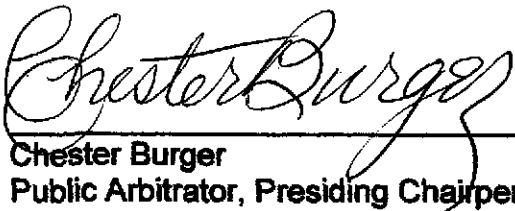
<u>Forum Fees</u>	= \$ 800.00
<u>Total Fees</u>	= \$ 800.00
<u>Less payments</u>	= \$ 800.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Chester Burger	-	Public Arbitrator, Presiding Chairperson
Fred L. Simon	-	Public Arbitrator
William C. Bieluch, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
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Chester Burger  
Public Arbitrator, Presiding Chairperson

7-18-06  
Signature Date

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Fred L. Simon  
Public Arbitrator

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

\_\_\_\_\_  
William C. Bieluch, Esq.  
Non-Public Arbitrator

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

July 24, 2006  
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Date of Service (For NASD Dispute Resolution use only)


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