

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Mei Michelson, Arthur Michelson, individually, as trustee of the Frieda Michelson 1997 Inter Vivos Trust, and as custodian for Aaron Michelson and Alicia Michelson, Claimants v. Salomon Smith Barney, Inc., Robert F. Taylor, and Robert B. Martensen, Respondents

Case Number: 02-04713

Hearing Site: San Francisco, California

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Nature of the Dispute: Customers vs. Member and Associated Persons

**REPRESENTATION OF PARTIES**

For Claimants:

Andrew F. Pierce  
Alexis K. Wodtke  
Pierce & Shearer LLP  
Palo Alto, California

For Respondents:

Terry Ross  
David D. Piper  
Keesal, Young & Logan  
Long Beach, California

**CASE INFORMATION**

Statement of Claim filed: August 6, 2002

Claimants' Uniform Submission Agreements signed: May 28, 2002 and August 2, 2002

Joint Statement of Answer and Counterclaim filed by Respondents Salomon Smith Barney, Inc., also known as Citigroup Global Markets, Inc. ("Smith Barney"), Robert F. Taylor, and Robert B. Martensen: October 30, 2002

**CASE SUMMARY**

Claimants alleged the following causes of action: unsuitability, breach of fiduciary duty, fraud in misrepresenting the strategy to be pursued by Robert F. Taylor, recklessness, negligence, failure to supervise and breach of contract. Claimants' allegations involve investments in various unspecified internet and telecommunications stocks.

Respondents denied the allegations of wrongdoing set forth in Claimants' Statement of Claim and asserted a number of affirmative defenses including, failure to state a claim, comparative fault, failure to mitigate damages, liability of third parties, ratification, no private right of action for violation of NASD Rules, waiver, estoppel, failure of Claimants to diligently monitor their investments, assumption of the risk, and Claimants had no basis upon which to recover attorneys' fees. Respondents filed a counterclaim against Claimant Arthur Michelson, as trustee of the Frieda Michelson 1997 Inter Vivos Trust for indemnity and contribution.

### **RELIEF REQUESTED**

Claimants requested:

1. Damages in the amount of \$1,600,000.00;
2. Punitive damages of \$8,000,000.00;
3. Attorney's fees; and
4. Such other and further relief as appropriate.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and an award of costs. Respondents also requested that they be indemnified for any losses of the Trust due to Claimant Arthur Michelson's breach of duties owed to the Trust.

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

On July 30, 2003, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators. Pursuant to the Code of Arbitration Procedure IM-10100 the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

Respondents Smith Barney, Robert F. Taylor and Robert B. Martensen 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 the Claim are bound by the determination of the Panel on all issues submitted.

On September 1, 2004 Claimants filed a voluntary dismissal with prejudice of the Statement of Claim as against Robert F. Taylor and Robert B. Martensen.

The parties agreed that the Award in this matter may be executed in counterparts or that a handwritten signed Award may be entered.

### **AWARD**

It is hereby stipulated by Claimants and Respondents, through their undersigned attorneys of record, that:

1. Each and every one of Claimants' claims asserted against Respondents is hereby dismissed with prejudice pursuant to a settlement between the Parties; and
2. Claimants do not object to the Panel rendering the following award:

The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Robert F. Taylor's (CRD #839687) and Robert B. Martensen's (CRD #716074) registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Robert F. Taylor and Robert B. Martensen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

After considering the Stipulation, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondents Robert F. Taylor's (CRD #839687) and Robert B. Martensen's (CRD #716074) registration records maintained by the CRD, with the understanding that pursuant to NASD Notice to Members 99-09, Respondents Robert F. Taylor and Robert B. Martensen must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
2. Each party shall bear its own costs, including attorney's fees.
3. 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
Counterclaim filing fee	= \$2,500.00

### **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	= \$3,350.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$5,500.00</u>
Total Member Fees	= \$9,600.00

### **Adjournment Fees**

The following adjournment fees are assessed:

The Panel determined that Respondents Smith Barney, Taylor and Martensen shall be assessed the \$1,200.00 adjournment fee in connection with the adjourned hearing dates of June 22-25, 2004.

### **3-Day Cancellation Fee**

During the hearing session held August 25, 2004, the parties advised that they had reached a settlement in this matter. Respondent Smith Barney agreed to pay the 3-Day Cancellation Fee in the amount of \$300.00.

### **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 a single arbitrator @ \$450.00/session = \$1,800.00

Pre-hearing conferences:	May 17, 2004	1 session
	May 18, 2004	1 session
	July 15, 2004	1 session
	July 29, 2004	1 session

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session = \$1,200.00

Pre-hearing conference:	December 3, 2003	1 session
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(5) Hearing sessions @ \$1,200.00/session = \$6,000.00

Hearings:	August 23, 2004	2 sessions
	August 24, 2004	2 sessions
	August 25, 2004	1 session

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Total Forum Fees	= \$9,000.00
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Claimants agreed to pay the \$1,200.00 forum fee in connection with the pre-hearing conference held December 3, 2003.

Respondent Smith Barney agreed to pay the balance of forum fees in the amount of \$7,800.00.

**Fee Summary**

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

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 1,200.00
Total Fees	= \$ 1,800.00
Less Payments	= \$( 1,800.00)
Balance Due NASD-DR	= \$ 0.00

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

Member Fees	= \$ 9,600.00
3-Day Cancellation Fee	= \$ 300.00
Forum Fees	= \$ 7,800.00
Total Fees	= \$ 17,700.00
Less Payments	= \$( 9,600.00)
Balance Due NASD-DR	= \$ 8,100.00

3. Respondents Smith Barney, Taylor and Martensen are charged jointly and severally with the following fees and costs:

Counterclaim Filing Fee	= \$ 2,500.00
Adjournment Fee	= \$ 1,200.00
Total Fees	= \$ 3,700.00
Less Payments	= \$( 0.00)
Balance Due NASD-DR	= \$ 3,700.00

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

**Parties' Signatures**

Date: \_\_\_\_\_

\_\_\_\_\_  
Andrew F. Pierce  
Attorney for Claimants  
ARTHUR MICHELSON, individually and  
as trustee of the FRIEDA MICHELSON  
1997 INTERVIVOS TRUST, MEI  
MICHELSON, AARON MICHELSON, and  
ALICIA MICHELSON

Date: \_\_\_\_\_

\_\_\_\_\_  
Terry Ross  
David D. Piper  
Attorneys for Respondents  
CITIGROUP GLOBAL MARKETS INC.  
f/k/a SALOMON SMITH BARNEY INC.  
d/b/a SMITH BARNEY, ROBERT F.  
TAYLOR and ROBERT B. MARTENSEN

**Parties' Signatures**

Date: 12-16-04

Andrew F. Pierce

Andrew F. Pierce  
Attorney for Claimants  
ARTHUR MICHELSON, individually and  
as trustee of the FRIEDA MICHELSON  
1997 INTERVIVOS TRUST, MEI  
MICHELSON, AARON MICHELSON, and  
ALICIA MICHELSON

Date: \_\_\_\_\_


\_\_\_\_\_  
Terry Ross  
David D. Piper  
Attorneys for Respondents  
CITIGROUP GLOBAL MARKETS INC.  
f/k/a SALOMON SMITH BARNEY INC.  
d/b/a SMITH BARNEY, ROBERT F.  
TAYLOR and ROBERT B. MARTENSEN

**Parties' Signatures**

Date: \_\_\_\_\_

\_\_\_\_\_  
Andrew F. Pierce  
Attorney for Claimants  
ARTHUR MICHELSON, individually and  
as trustee of the FRIEDA MICHELSON  
1997 INTERVIVOS TRUST, MEI  
MICHELSON, AARON MICHELSON, and  
ALICIA MICHELSON

Date: December 16, 2004

  
\_\_\_\_\_  
Terry Ross  
David D. Piper  
Attorneys for Respondents  
CITIGROUP GLOBAL MARKETS INC.  
f/k/a SALOMON SMITH BARNEY INC.  
d/b/a SMITH BARNEY, ROBERT F.  
TAYLOR and ROBERT B. MARTENSEN



**ARBITRATION PANEL**

Allan Blau, Esq.	-	Public Arbitrator, Presiding Chair
Charles B. Stark, Jr.	-	Public Arbitrator
Thomas A. Thornhill, Jr.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Allan Blau, Esq.  
Chair, Public Arbitrator

1/22/05  
Signature Date

\_\_\_\_\_  
Charles B. Stark, Jr.  
Public Arbitrator

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

\_\_\_\_\_  
Thomas A. Thornhill, Jr.  
Non-Public Arbitrator

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

1/28/05  
Date of Service

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Allan Blau, Esq.	-	Public Arbitrator, Presiding Chair
Charles B. Stark, Jr.	-	Public Arbitrator
Thomas A. Thornhill, Jr.	-	Non-Public Arbitrator

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\_\_\_\_\_  
Allan Blau, Esq.  
Chair, Public Arbitrator

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



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Charles B. Stark, Jr.  
Public Arbitrator

1/7/05  
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Signature Date

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Thomas A. Thornhill, Jr.  
Non-Public Arbitrator

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

1/28/05  
\_\_\_\_\_  
Date of Service

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Allan Blau, Esq.	-	Public Arbitrator, Presiding Chair
Charles B. Stark, Jr.	-	Public Arbitrator
Thomas A. Thornhill, Jr.	-	Non-Public Arbitrator

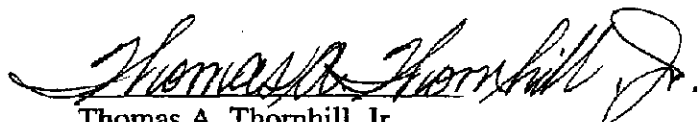
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\_\_\_\_\_  
Allan Blau, Esq.  
Chair, Public Arbitrator

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Signature Date

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Charles B. Stark, Jr.  
Public Arbitrator

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Signature Date

  
Thomas A. Thornhill, Jr.  
Non-Public Arbitrator

  
Signature Date

1/28/05  
Date of Service