

Stipulated Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Maureen Abate and Gerard Abate, (Claimants) v. Salomon Smith Barney, Inc., Gilford Securities, Inc., Francis Weber, Jr., Jeffrey S. Miller, Stephen Kaplan and Phillip D. Vallone, (Respondents)

Case Number: 02-04906

Hearing Site: New York, New York

REPRESENTATION OF PARTIES

Nature of Dispute: Customers vs. Members and Associated Persons

Claimants, Maureen Abate and Gerard Abate, hereinafter collectively referred to as "Claimants": John Lawlor, Esq., 129 Third Street, Mineola, NY 11501.

Respondents, Jeffrey S. Miller, Stephen Kaplan and Gilford Securities, Inc.: Michael Kalmus, Law Office of Michael Kalmus, 850 Third Avenue, New York, NY 10022.

Respondents Salomon Smith Barney, Inc. and Phillip D. Vallone: Alejandro Schwed, Salomon Smith Barney, Inc., and Nicholas P. Crowell, Esq., Sidley Austin Brown & Wood, 787 Seventh Ave., New York, NY 10019.

Respondent Francis Weber, Jr.: Steve Biss, Esq., PO Box 592, Richmond, VA 23219.

Salomon Smith Barney, Inc., Gilford Securities, Inc., Vallone, Miller, Kaplan, and Weber are hereinafter collectively referred to as "Respondents."

CASE INFORMATION

Statement of Claim filed on or about: August 16, 2002

Claimants Maureen and Gerard Abate signed the Uniform Submission Agreement: July 29, 2002

Statement of Answer filed by Respondents Salomon Smith Barney and Phillip D. Vallone on or about: December 5, 2003.

Respondents Salomon Smith Barney and Phillip D. Vallone signed the Uniform Submission Agreement: December 5, 2003.

Statement of Answer filed by Respondents Gilford Securities, Inc., Steven Kaplan and Jeffrey S. Miller on or about: October 25, 2002.

Respondent Gilford Securities, Inc. signed the Uniform Submission Agreement: October 25, 2002.

Respondents Steven Kaplan and Jeffrey S. Miller signed the Uniform Submission Agreement: October 28, 2002.

Statement of Answer filed by Respondent Francis Weber, Jr. on or about: November 29, 2002.

CASE SUMMARY

Claimants asserted the following causes of action: The causes of action relate to unauthorized, excessive and unsuitable trading on margin, fraud, failure to supervise, breach of fiduciary duty, negligence, control personal liability, violations of applicable federal law, SEC Rules, NYSE Rules and NASD Rules of Fair Practice. Claimants' claims primarily involved trading in shares of SmartServ Online, Inc.

Respondents requested dismissal of the Statement of Claim in its entirety. Unless specifically admitted in their Answers, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: Claimants are experienced investors and all recommendations were consistent with their investment objectives; all transactions in Claimants' accounts were discussed in detail with Mr. Abate and were authorized by him prior to entry; Claimants ratified all of the transactions and were fully aware of the risk and that they were on margin; the damages, if any, alleged to have been sustained by Claimants were caused in whole or in part by the Claimants' failure to mitigate damages.

RELIEF REQUESTED

Claimants requested:

- a. Compensatory damages in the amount of \$170,000;
- b. Punitive damages in the amount of \$500,000;
- c. Interest on their lost investment principal;
- d. Attorneys' fees and expenses, including accountants and expert fees;
- e. Forum fees, hearing fees, and costs; and
- f. Such other and further relief as the Panel deems just and proper.

Respondents requested:

- a. Dismissal of the Statement of Claim in its entirety and to award Respondents costs and attorneys' fees incurred in this Arbitration together with such other relief as is just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Weber did not file with NASD Dispute Resolution, Inc. a properly executed submission agreement but is required to submit to arbitration pursuant to the Code and, having answered the Statement of Claim, and appeared are bound by the determination of the Arbitration Panel on all issues submitted.

Prior to the Settlement Agreement Claimants dismissed and discontinued with prejudice all claims against Phillip D. Vallone and Stephen Kaplan. Claimants dismissed and discontinued without prejudice all claims against Francis Weber, Jr.

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

On December 5, 2003, the parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of all parties for entry of an Award, the Panel grants the motion and enters this award granting the following relief:

1. The parties have entered into a confidential settlement agreement;
2. The Claimants have dismissed all claims with prejudice against Respondents Salomon Smith Barney, Inc., Phillip D. Vallone, Gilford Securities, Inc., Jeffrey S. Miller and Stephen Kaplan;
3. All other requests for relief are hereby denied;
4. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Jeffrey S. Miller, Stephen Kaplan and Phillip D. Vallone'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, Respondents Jeffrey S. Miller, Stephen Kaplan and Phillip D. Vallone must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
5. All parties to the above-captioned arbitration agree to bear their own costs and attorneys' fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc. 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 person(s) at the time of the events giving rise to the dispute. In this matter, the member firms Gilford Securities, Inc. and Salomon Smith Barney, Inc. are parties.

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 7,000.00

Forum Fees and Assessments

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

(1) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: May 13, 2003	1 session

Total Forum Fees	= \$ 1,200.00
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1. The Panel has assessed \$ 600.00 of the forum fees jointly and severally against all Claimants.
2. The Panel has assessed \$ 600.00 of the forum fees jointly and severally against all Respondents.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 375.00
<u>Forum Fees</u>	= \$ 1,200.00
Total Fees	= \$ 1,575.00
<u>Less payments</u>	= \$ 2,094.87
Refund Due Claimant	= \$ 519.87

Please be advised that pursuant to Rule 10332(f) of the Code of Arbitration Procedure, NASD is retaining the total initial amount of the hearing session deposit by the Claimants, because this office was notified by the parties that they settled or withdrew this matter within 8 business days of the first scheduled hearing session.

2. Respondent Salomon Smith Barney, Inc. is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
Total Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ 8,380.13
Refund Due Salomon Smith Barney, Inc.	= \$ 1,380.13

4. Respondent Gilford Securities, Inc. is solely liable for:

<u>Member Fees</u>	= \$ 7,000.00
Total Fees	= \$ 7,000.00
<u>Less payments</u>	= \$ 7,000.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

5. Respondents are jointly and severally liable for:

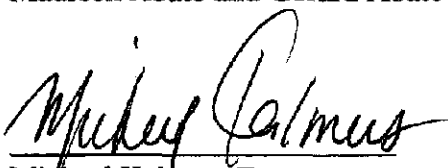
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 600.00
<u>Less payments</u>	= \$ 600.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 0.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Parties' Signatures

John Lawlor, Esq.
Attorney for Claimants
Maureen Abate and Gerard Abate

Dated



Michael Kalmus, Esq.
Attorney for Respondents
Gilford Securities, Inc., Jeffrey S.
Miller and Stephen Kaplan

1/7/04

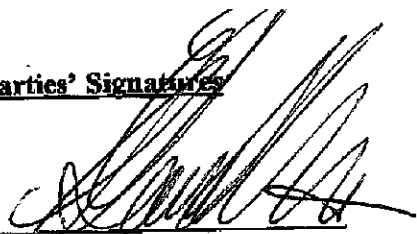
Dated

SIDLEY, AUSTIN, BROWN
& WOOD

By: Nicholas P. Crowell, Esq.
Attorneys for Respondents
Salomon SmithBarney, Inc. and
Phillip D. Vallone

Dated

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John Lawlor, Esq.
Attorney for Claimants
Maureen Abate and Gerard Abate

1/7/04
Dated

Michael Kalmus, Esq.
Attorney for Respondents
Gilford Securities, Inc., Jeffrey S.
Miller and Stephen Kaplan

Dated

SIDLEY, AUSTIN, BROWN
& WOOD LLP



By: Nicholas P. Crowell, Esq.
Attorneys for Respondents
Salomon SmithBarney, Inc. and
Phillip D. Vallone

1/7/04
Dated

ARBITRATION PANEL

Jeffrey Alan Helewitz, Esq.	-	Public Arbitrator, Presiding Chair
Russell P. Genna, Esq.	-	Public Arbitrator
Frank Irizarry, Esq.	-	Industry Arbitrator

Concurring Arbitrators' Signature(s)



Jeffrey Alan Helewitz, Esq.
Public Arbitrator, Presiding Chair

14 January 2004
Dated

Russell P. Genna, Esq.
Public Arbitrator

Dated

Frank Irizarry, Esq.
Industry Arbitrator

Dated

January 27, 2004
Date of Service (For NASD office use only)

ARBITRATION PANEL

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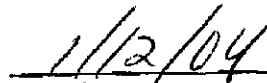
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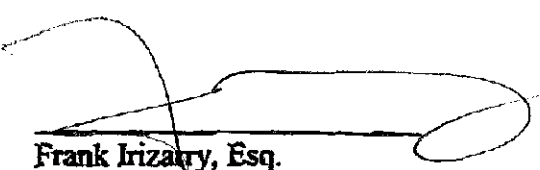
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