

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

James R. Jensen and Debra Jensen

v.

02-04973

Minneapolis, Minnesota

Respondents

Citigroup Global Markets, Inc. f/k/a/ Salomon  
Smith Barney, Inc. and Jamie Peter Constantine

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Nature of Dispute: Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

James R. Jensen and Debra Jensen ("Claimants") were represented by Mark J. Briol, Esq., of Briol & Associates, PLLC, Minneapolis, Minnesota.

Citigroup Global Markets, Inc. f/k/a/ Salomon Smith Barney, Inc. ("Citigroup") and Jamie Peter Constantine ("Constantine"), hereinafter referred to as "Respondents" were represented by Mitchell W. Granberg, Esq., of Dorsey & Whitney, LLP, Minneapolis, Minnesota.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 22, 2002. Submission Agreement of Claimants James R. Jensen and Debra Jensen were signed on or about August 9, 2002.

A Joint Statement of Answer was filed by Respondents Citigroup Global Markets, Inc. f/k/a/ Salomon Smith Barney, Inc. and Jamie Peter Constantine on or about November 1, 2002. Submission Agreement of Respondent Citigroup Global Markets, Inc. f/k/a/ Salomon Smith Barney, Inc. was signed on or about November 1, 2002 by Victor A. Machinski, Jr., Associate General Counsel, Citigroup Global Markets.

**CASE SUMMARY**

Claimants asserted the following causes of action: violations of federal and state securities laws, vicarious liability, breach of contract, breach of implied duty and good faith and fair dealing, equitable and promissory estoppel, conversion, negligence, breach of fiduciary duty, common law fraud and Minnesota Prevention of Consumer Fraud Act. The causes of action related to Claimants' allegation that Respondent Constantine invested them in a margin trading strategy contrary to their explicit instructions. Claimants further alleged that Respondent Constantine churned their accounts

and made several unauthorized trades in high-tech common stocks that were volatile in nature and in contrast with the investment objectives.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: the damages allegedly suffered by Claimants were not proximately caused by any act or recommendation attributable to Respondents, such damages, if any, were proximately caused by intervening or superceding causes over which Respondents had no control; Claimants' comparative fault, lack of diligence, and failure to mitigate their financial affairs, bars any recovery of damages; Claimants directed and/or authorized the purchase of all investments for their accounts; Claimants' claims against Respondents are barred by the principles of laches, waiver, estoppel and ratification; and Respondents acted at all times in accordance with proper brokerage procedure and industry rules and regulations governing the supervision of employees and accounts.

#### **RELIEF REQUESTED**

Claimants requested an award in excess of \$1,000,000. In addition, Claimants requested punitive damages, interest, attorneys' fees, costs and any other relief the Panel deemed just and proper.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondent Jamie Peter Constantine did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the originals remain on file with NASD Dispute Resolution ("NASD").

#### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents, Citigroup Global Markets, Inc. f/k/a/ Salomon Smith Barney, Inc. and Jamie Peter Constantine, are jointly and severally liable for and shall pay to Claimants, James R.

Jensen and Debra Jensen, the sum of Seventy Five Thousand Dollars and No Cents (\$75,000.00) in compensatory damages;

2. Respondents, Citigroup Global Markets, Inc. f/k/a/ Salomon Smith Barney, Inc. and Jamie Peter Constantine, are jointly and severally liable for and shall pay to Claimants, James R. Jensen and Debra Jensen, the sum of Thirty Eight Thousand Dollars and No Cents (\$38,000.00) in attorneys' fees pursuant to Minnesota statute MS § 80A.23;
3. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief, including punitive damages, by any party hereto are denied with prejudice; and
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to, attorneys' fees.

#### **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 = \$ 500

##### **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 at the time of the events giving rise to the dispute. In this matter, the member firm is Citigroup Global Markets, Inc. f/k/a/ Salomon Smith Barney, Inc.

Member surcharge	= \$ 2,800
Pre-hearing process fee	= \$ 750
Hearing process fee	= \$ 5,000

##### **Forum Fees and Assessments**

The Arbitration 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. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$ 1,200 = \$ 1,200

Pre-hearing conference: 02/28/2003 1 session

Five (5) Hearing sessions x \$ 1,200 = \$ 6,000

Hearing Dates: 09/24/2003 3 sessions  
09/25/2003 2 sessions

Total Forum Fees = \$ 7,200

The Arbitration Panel has assessed \$ 3,600 of the forum fees jointly and severally to James R. Jensen and Debra Jensen.

The Arbitration Panel has assessed \$ 3,600 of the forum fees jointly and severally to Citigroup Global Markets, Inc. f/k/a/ Salomon Smith Barney, Inc. and Jamie Peter Constantine.

**Fee Summary**

Claimants, James R. Jensen and Debra Jensen, are jointly and severally liable for:

Initial Filing Fee	= \$ 500
Forum Fees	= \$ 3,600
<u>Total Fees</u>	= \$ 4,100
<u>Less payments</u>	= \$ 2,900
Balance Due NASD Dispute Resolution	= \$ 1,200

Respondent, Citigroup Global Markets, Inc. f/k/a/ Salomon Smith Barney, Inc., is liable for:

<u>Member Fees</u>	= \$ 8,550
<u>Total Fees</u>	= \$ 8,550
<u>Less payments</u>	= \$ 8,550
Balance Due NASD Dispute Resolution	= \$ 0

Respondents, Citigroup Global Markets, Inc. f/k/a/ Salomon Smith Barney, Inc. and Jamie Peter Constantine, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 3,600
<u>Total Fees</u>	= \$ 3,600
<u>Less payments</u>	= \$ 2,950
Balance Due NASD Dispute Resolution	= \$ 650

**All balances are due to NASD Dispute Resolution pursuant to Rule 10330(g) of the Code of Arbitration**

**ARBITRATION PANEL**

Mark S. Gleason, Esq. - Public Arbitrator, Presiding Chair  
Natalie Z. Aizpuru - Public Arbitrator  
Paul J. Hennen - Non-Public Arbitrator

Concurring Arbitrators:

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Mark S. Gleason, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date

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Natalie Z. Aizpuru  
Public Arbitrator

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

\_\_\_\_\_  
Paul J. Hennen  
Non-Public Arbitrator

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

*10/28/03*  
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Date of Service (NASD use only)

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Public Arbitrator, Presiding Chair

10/23/03  
Signature Date

Natalie Z. Aizpuru  
Public Arbitrator

Signature Date

Paul J. Hennen  
Non-Public Arbitrator

Signature Date

10/22/03  
Date of Service (NASD use only)

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Public Arbitrator

Paul J. Hennen  
Non-Public Arbitrator

Signature Date

10/23/03  
Signature Date

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NASD Dispute Resolution  
Arbitration No. 02-04973  
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Signature Date

  
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Paul J. Hennen  
Non-Public Arbitrator

10/28/03  
\_\_\_\_\_  
Signature Date

10/29/03  
\_\_\_\_\_  
Date of Service (NASD use only)