

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

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In the Matter of the Arbitration Between:

James Stack (Claimant) v. Salomon Smith Barney Inc., Stephen O'Donnell, Jason Siegel, Merrill Lynch, Inc., Marianne Naughton, Raymond James Financial Services, Inc. and William Schloemer, Jr.

Case Number: 02-05305

Hearing Site: New York, New York

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Nature of the Dispute: Customer v. Members and Associated Persons

**REPRESENTATION OF PARTIES**

Claimant James Stack ("Stack") hereinafter referred to as "Claimant": Christopher B. Jones, Esq., and Michael Knoll, Esq., Law Offices, Scranton, PA. Previously represented by Jerome Olitt, Stanford, CT.

Respondents Merrill Lynch, Inc. ("Merrill Lynch") and Marianne Naughton ("Naughton"): Bryan Reyhani, Esq., Loeb & Loeb, LPP, New York, NY.

Respondents Salomon Smith Barney Inc. n/k/a Citigroup Global Markets, Inc. ("Smith Barney"), Jason Siegel ("Siegel") and Stephen O'Donnell ("O'Donnell"): Sean Coughlin, Salomon Smith Barney, Inc., New York, NY.

Respondents Raymond James Financial Services, Inc. ("Raymond James") and William Schloemer ("Schloemer"): Shepard D. Tate, Esq., Tate, Lazarini & Beall, PLC, Memphis, TN.

**CASE INFORMATION**

Statement of Claim filed on or about: August 31, 2002.

Amended Statement of Claim filed on or about: October 1, 2003.

Claimant signed the Uniform Submission Agreement: August 31, 2002.

Joint Statement of Answer filed by Respondents Smith Barney, Siegel and O'Donnell, on or about: November 12, 2002.

Respondent Smith Barney signed the Uniform Submission Agreement: November 18, 2002.

Respondent Siegel did not sign the Uniform Submission Agreement.

Respondent O'Donnell did not sign the Uniform Submission Agreement.

Joint Answer and Motion to Dismiss filed by Respondents Raymond James and Schloemer on or about: November 26, 2002.

Joint Motion to Dismiss and Answer to Claimant's Amended Statement of Claim filed by Respondents Raymond James and Schloemer on or about: October 29, 2003.

Respondent Raymond James signed the Uniform Submission Agreement: October 11, 2002.  
Respondent Schloemer signed the Uniform Submission Agreement: November 26, 2002.

Joint Motion to Dismiss and Statement of Answer filed by Respondents Merrill Lynch, Naughton and O'Donnell on or about: December 13, 2002.  
Respondent Merrill Lynch signed the Uniform Submission Agreement: November 4, 2002.  
Respondent Naughton signed the Uniform Submission Agreement: December 9, 2002.

### **CASE SUMMARY**

Claimant asserted the following causes of action: improper and reckless management of the accounts; deceptive, deceitful, misleading and/or false representations/statements; failure to follow the customers' directives and instructions; inappropriate and/or unsuitable transactions; fraudulent conduct; omissions and failures constituting negligence; unacceptable levels of risk and risk tolerance; failure to maintain/implement adequate and/or appropriate supervisory controls; improper business conduct and trading practices; breach of fiduciary obligations and duties; breach of the implied covenants of good faith and fair dealings; and violations of Section and Rule 10b-5 of the Exchange Act. The causes of action relate to the order execution of unspecified Nasdaq securities.

Unless specifically admitted in their Answer, Respondents Smith Barney, Siegel and O'Donnell denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

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

Unless specifically admitted in their Answer, Respondents Merrill Lynch, Naughton and O'Donnell denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages jointly and severally from Respondents Smith Barney, O'Donnell and Siegel in the amount of \$4,500,000.00; Respondent Merrill Lynch in the amount of \$400,000.00; and Respondents Raymond James and Schloemer in the amount of \$2,300,000.00.

In the Amended Statement of Claim which did not assert claims against Merrill Lynch, Naughton and O'Donnell (for the period of time he was employed by Merrill Lynch), Claimant requested compensatory damages in the amount of \$7,000,000.00, additional interest on the award from the date of the award until paid, punitive damages in the amount of \$21,000,000.00, attorneys' fees, reimbursement of filing fees, costs and any additional remedy deemed appropriate.

Respondents Smith Barney, O'Donnell and Siegel requested that the Statement of Claim be dismissed in its entirety and that Respondents be awarded their costs.

Respondents Raymond James and Schloemer requested that this action be dismissed; that the Panel direct that all costs and assessments by the NASD be borne by Claimant; and that Respondents be awarded their preparation costs, travel expenses, attorneys' fees, expert witness

fees and such other further and general relief to which they may be entitled.

Respondents Merrill Lynch, Naughton and O'Donnell requested that all claims relating to the time period that Claimant's accounts were maintained at Merrill Lynch be dismissed; that Respondents Merrill Lynch and Marianne Naughton be dismissed from this proceeding entirely; that the costs of this action, including the Merrill Lynch Respondents' attorneys' fees, be assessed against Claimant; and that the Merrill Lynch Respondents' be awarded such other and further relief as is deemed just and proper. Respondent Naughton requests that all references to this matter be expunged from her permanent registration record maintained by the Central Registration Depository.

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

Respondents Siegel and O'Donnell did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

On or about June 20, 2003, Claimant withdrew his claims against Respondents Merrill Lynch and Naughton and O'Donnell for the period of time while he was employed at Merrill Lynch.

On or about October 1, 2004, Claimant settled his claims against Smith Barney, Siegel and O'Donnell.

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

1. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Naughton's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to Notices to Members 99-09 and 99-54, Respondent Naughton must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Schloemer's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to Notices to Members 99-09 and 99-54, Respondent Schloemer 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, including punitive damages, 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 = \$ 600.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Inc., is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Total Member Fees</u>	<u>= \$ 2,450.00</u>

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Salomon Smith Barney, Inc. is a party.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,500.00</u>
<u>Total Member Fees</u>	<u>= \$ 10,000.00</u>

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Raymond James Financial Services, Inc. is a party.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 5,500.00</u>
<u>Total Member Fees</u>	<u>= \$ 10,000.00</u>

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

The Panel has assessed forum fees for each session conducted. 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:

Nine (9) Pre-hearing sessions with Panel @ \$1,200.00 per session	= \$10,800.00
Pre-hearing conferences:	
June 20, 2003	1 session
August 25, 2003	1 session
January 9, 2004	1 session
February 20, 2004	1 session
March 25, 2004	1 session
May 18, 2004	1 session
May 25, 2004	1 session
September 23, 2004	1 session

	January 20, 2005	1 session	
Thirty-eight (38) Hearing sessions @ \$1,200.00 per session			= \$45,600.00
Hearing Dates:	March 29, 2004	2 sessions	
	March 30, 2004	2 sessions	
	March 31, 2004	2 sessions	
	April 1, 2004	2 sessions	
	April 2, 2004	2 sessions	
	October 11, 2004	2 sessions	
	October 12, 2004	2 sessions	
	November 2, 2004	2 sessions	
	November 3, 2004	2 sessions	
	November 4, 2004	2 sessions	
	November 16, 2004	2 sessions	
	November 17, 2004	2 sessions	
	August 15, 2005	2 sessions	
	August 16, 2005	2 sessions	
	August 17, 2005	1 session	
	August 18, 2005	2 sessions	
	August 19, 2005	2 sessions	
	August 22, 2005	2 sessions	
	August 23, 2005	2 sessions	
	October 20, 2005	1 session	
<hr/> Total Forum Fees			= \$56,400.00

1. The Panel has assessed \$28,200.00 of the forum fees to Claimant.
2. The Panel has assessed \$28,200.00 of the forum fees jointly and severally to Raymond James and Schloemer.

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

1. Claimant requested tapes = \$ 60.00

#### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$28,200.00
<u>Administrative Costs</u>	= \$ 60.00
Total Fees	= \$28,860.00
<u>Less payments</u>	= \$ 1,860.00
Balance Due NASD Dispute Resolution	= \$27,000.00

2. Respondent Merrill Lynch is solely liable for:

<u>Member Fees</u>	= \$ 2,450.00
<u>Total Fees</u>	= \$ 2,450.00
<u>Less payments</u>	= \$ 3,350.00
<u>Refund Due</u>	= \$ 900.00

3. Respondent Smith Barney is solely liable for:

<u>Member Fees</u>	= \$10,000.00
<u>Total Fees</u>	= \$10,000.00
<u>Less payments</u>	= \$ 8,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 1,450.00

4. Respondent Raymond James is solely liable for:

<u>Member Fees</u>	= \$10,000.00
<u>Total Fees</u>	= \$10,000.00
<u>Less payments</u>	= \$ 3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 6,450.00

5. Respondents Raymond James and Schloemer are jointly and severally liable for:

<u>Forum Fees</u>	= \$28,200.00
<u>Total Fees</u>	= \$28,200.00
<u>Less Payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$28,200.00

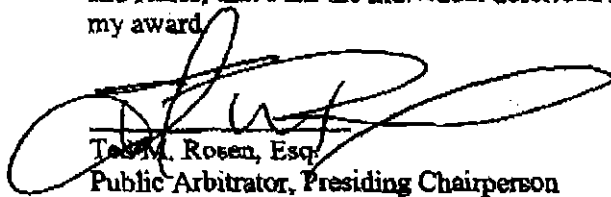
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Ted M. Rosen, Esq.	-	Public Arbitrator, Presiding Chairperson
Arnold Linsky	-	Public Arbitrator
Mark J. Happe, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

  
Ted M. Rosen, Esq.  
Public Arbitrator, Presiding Chairperson

11/21/05  
Signature Date

\_\_\_\_\_  
Arnold Linsky  
Public Arbitrator

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

\_\_\_\_\_  
Mark J. Happe, Esq.  
Non-Public Arbitrator

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

November 23, 2005  
Date of Service (For NASD Dispute Resolution use only)

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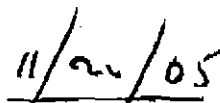
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