

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

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In the Matter of the Arbitration Between

Names of Claimants

Michael and Julie Pottorff

and

02-05375  
Des Moines, Iowa

Names of Respondents

Citigroup Global Markets, Inc.,  
f/n/a Salomon Smith Barney, Inc.,  
Jay D. Layman, and Mark D. Stuck

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**NATURE OF THE DISPUTE**

Customers vs. Member Firm and Associated Persons

**REPRESENTATION OF PARTIES**

Michael and Julie Pottorff ("Claimants") were represented by Gail E. Boliver, Esq., of the Boliver Law Firm, Marshalltown, Iowa.

Citigroup Global Markets, Inc., ("Citigroup Global") Jay D. Layman ("Layman") and Mark D. Stuck ("Stuck"), thereafter collectively referred to as ("Respondents"), were represented by Jerry M. Santangelo, Esq., of Neal, Gerber & Eisenberg LLP, Chicago, Illinois and William A. Hohaus, Esq. of Citigroup Global Markets, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about September 10, 2002. The Submission Agreements of Claimants, Michael and Julie Pottorff, were signed on or about January 26, 2001.

The Joint Statement of Answer was filed by Respondents, Citigroup Global Markets, Inc., Jay D. Layman, and Mark D. Stuck on or about February 3, 2003. The Submission Agreement of Respondent, Citigroup Global Markets, Inc., was signed on or about November 27, 2002. Respondent, Jay D. Layman, did not file a Submission Agreement. Respondent, Mark D. Stuck, did not file a Submission Agreement.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; negligence; violation of Iowa Securities Acts; violation of NASD Rules of Supervision and Suitability; misrepresentation; and negligent supervision. The causes of action related primarily to recommendations and lack of recommendations relating to McLeod USA (hereinafter McLeod). Claimants alleged that Respondents caused them to hold a very high risk portfolio concentrated in McLeod and failed to make recommendations based upon their financial objectives as well as inappropriately employed margin which led to losses in their portfolio. Claimant, Michael Pottorff, obtained McLeod stock primarily pursuant to stock options he received as a result of his employment at McLeod. Claimants asserted that Respondents failed to make suitable recommendations relative to protecting their concentrated position in McLeod including failing to recommend that they sell or diversify all or a part of their position in McLeod and failing to recommend that they place a cashless collar on their McLeod position, or take other appropriate protective measures. Claimants further asserted that they were misled by inappropriate reports and recommendations prepared by Salomon Smith Barney analyst, Jack Grubman, on McLeod and that such reports caused them to incur the losses, which they sustained in their portfolio.

Respondents deny each and every material allegation contained within the Statement of Claim, and further deny liability of any kind to Claimants. Respondents alleged that Claimants expressed that they were interested in short-term, aggressive trading strategies and did not want to accept the Respondents' recommendations to diversify their accounts. Respondents asserted that Claimants assumed the risk of the strategy which Claimants chose to undertake in their non-discretionary account.

### **RELIEF REQUESTED**

Claimants requested an award of at least \$1,000,000.00, punitive damages, costs, attorney's fees and such other damages as the Panel may award and deem appropriate under the circumstances.

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

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

On or about October 13, 2004, the Panel entered an order, which granted Claimants' Motion to Change the Venue from Omaha, Nebraska to Des Moines, Iowa.

Respondents, Jay D. Layman and Mark D. Stuck, did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the

claim, appeared and testified at the hearing are 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 original(s) remain on file with the NASD Dispute Resolution (the "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. Claimants' claims, each and all, are denied and dismissed with prejudice.
2. To the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. 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 the non-refundable filing fees for each claim:

Initial claim filing fee = \$375.00

#### **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. In this matter, the member firm is Citigroup Global Markets, Inc.

Member surcharge \$ 2,250.00

Pre-hearing process fee	\$	750.00
Hearing process fee	\$	4,000.00
Total Member Fees	\$	<u>7,000.00</u>

Adjournments granted during these proceedings:

November 19-21, 2003 Hearing Dates, adjournment requested by  
Respondents (waived by the Panel) = \$1,200.00

August 16-18, 2004 Hearing Dates, adjournment requested by  
Respondents (waived by the Panel) = \$1,500.00

**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:

4	Pre-hearing sessions with one Arbitrator	x	450.00	\$	1,800.00
	April 25, 2003	1	session		
	April 29, 2003	1	session		
	September 26, 2003	1	session		
	November 18, 2003	1	session		
3	Pre-hearing sessions with Panel	x	1,200.00	\$	3,600.00
	March 5, 2003	1	session		
	March 19, 2003	1	session		
	August 11, 2004	1	session		
8	Hearing sessions	x	1,200.00	\$	9,600.00
	December 21, 2004	3	sessions		
	December 22, 2004	2	sessions		
	December 23, 2004	2	sessions		
	January 5, 2005	1	session		
	Total Forum Fees			\$	<u>15,000.00</u>

The Arbitration Panel has assessed \$15,000.00 of the forum fees to Citigroup Global Markets, Inc.

**Fee Summary**

Claimants, Michael and Julie Pottorff, are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$	375.00
Total Fees	= \$	375.00
<u>Less payments</u>	= \$	-1,575.00
Refund due to Claimant	= \$	1,200.00

Respondent, Citigroup Global Markets, Inc., is liable for:

Member Fees	= \$	7,000.00
<u>Forum Fees</u>	= \$	15,000.00
Total Fees	= \$	22,000.00
<u>Less payments</u>	= \$	-7,000.00
Balance Due NASD Dispute Resolution	= \$	15,000.00

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

**ARBITRATION PANEL**

Jeffrey M. Bain, Esq. - Public Arbitrator, Presiding Chair  
George A. Abbott - Public Arbitrator  
Douglas A. Spier - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Jeffrey M. Bain, Esq.  
Jeffrey M. Bain, Esq.  
Public Arbitrator, Presiding Chair

01/12/05  
Signature Date

/s/ George A. Abbott  
George A. Abbott  
Public Arbitrator

01/11/05  
Signature Date

/s/ Douglas A. Spier  
Douglas A. Spier  
Non-Public Arbitrator

01/12/05  
Signature Date

01/12/05  
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