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

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In the Matter of the Arbitration Between:

Names of the Claimants

Alfred Berger and Dorothy Berger

Case Number: 02-06152

Names of the Respondents

Salomon Smith Barney, Inc.

Richard Strauss

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

For Alfred Berger ("AB") and Dorothy Berger ("DB"), hereinafter collectively referred to as "Claimants":  
William J. Cornwell, Esq., Weiss & Handler, P.A., Boca Raton, Florida.

For Salomon Smith Barney, Inc. ("SSB") and Richard Strauss ("Strauss"), hereinafter collectively referred to as  
"Respondents": Holly R. Skolnick, Esq., Greenberg Traurig, P.A., Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: October 11, 2002.

Claimants signed the Uniform Submission Agreement: October 9, 2002.

Statement of Answer filed by Respondents on or about: December 16, 2002.

Respondents signed the Uniform Submission Agreements: December 16, 2002.

**CASE SUMMARY**

Claimants asserted the following causes of action: unsuitability; breach of fiduciary duty; negligence; and breach of implied covenant of good faith and fair dealing. The causes of action relate to the recommendation and purchase of Worldcom, Qualcomm, and other alleged risky, speculative equities in Claimants' account.

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

**RELIEF REQUESTED**

Claimants requested rescission of all unsuitable transactions in the amount of approximately \$100,000.00, or alternatively, compensatory damages in an amount in excess of \$100,000.00; pre- and post-award interest figured at the maximum legal rate and dating from the original purchase; costs of arbitration, including filing fees and attorney's fees; and such other relief and costs as are deemed reasonable.

Respondents requested that the Statement of Claim be denied and dismissed with prejudice, that the costs associated with the arbitration proceeding be assessed against Claimants, and that Respondents be reimbursed for their attorneys' fees.

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

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 (if any), the Arbitrator (Panel) has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are denied in their entirety.

Each party shall pay its own attorneys' fees.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Strauss'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, Respondent Strauss must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 225.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, SSB is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00
Total Member Fees	= \$3,550.00

#### **Adjournment Fees**

Adjournments fees were not assessed in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

Injunctive relief fees were not assessed in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: April 16, 2003 1 session	
One (1) Pre-hearing session with a single arbitrator @ \$450.00/session	= \$ 450.00
Pre-hearing conference: September 5, 2003	
Three (3) Hearing sessions with the Panel @ \$750.00/session	= \$2,250.00
Hearing Dates: October 1, 2003 2 sessions	
October 2, 2003 1 session	
Total Forum Fees	= \$3,450.00

The Panel has assessed forum fees of \$1,725.00 to Claimants, jointly and severally.

The Panel has assessed forum fees of \$1,725.00 to Respondent SSB.

**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.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$1,725.00
Total Fees	= \$1,950.00
Less payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$ 525.00

Respondent SSB is solely liable for:

Member Fees	= \$3,550.00
<u>Forum Fees</u>	<u>= \$1,725.00</u>
Total Fees	= \$5,275.00
<u>Less payments</u>	<u>= \$3,550.00</u>
Balance Due NASD Dispute Resolution	= \$1,725.00

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

**ARBITRATION PANEL**

Perry Phillips	-	Public Arbitrator, Presiding Chairperson
Jennifer Gwyn Klein	-	Public Arbitrator
Donald R. McGahan	-	Non-Public Arbitrator

**Concurring Arbitrators' Signature(s)**

/s/  
Perry Phillips  
Public Arbitrator, Presiding Chairperson

10/17/03  
Signature Date

/s/  
Jennifer Gwyn Klein  
Public Arbitrator

10/15/03  
Signature Date

/s/  
Donald R. McGahan  
Non-Public Arbitrator

10/15/03  
Signature Date

10/21/03  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 02-06152

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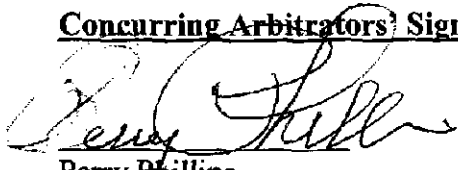
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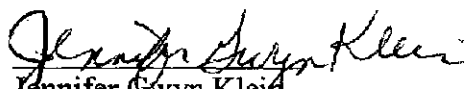
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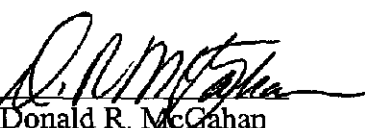
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