

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimants

Keith E. Dyas and the Dyas Revocable Trust,  
Keith and Sally Dyas TTEE

v.

02-07079  
Denver, Colorado

Respondents

Citigroup Global Markets, Inc., f/k/a  
Salomon Smith Barney, Inc.  
Arthur H. Harter, III and Smith Barney  
Portfolio Management Group

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Nature of Dispute: Customers v. Member, Associated Person and Non-Member

**REPRESENTATION OF PARTIES**

Keith E. Dyas and the Dyas Revocable Trust, Keith and Sally Dyas TTEE ("**Claimants**") were represented by Miles M. Gersh, Esq., of Gersh & Helfrich, LLP, Denver, Colorado.

Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc. ("**Citigroup**"), Arthur H. Harter, III ("**Harter**") and Smith Barney Portfolio Management Group ("**SBPMG**") were represented by Linda R. Alpert, Esq., of Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 19, 2002. Submission Agreements of Claimants Keith E. Dyas and the Dyas Revocable Trust, Keith and Sally Dyas TTEE were signed on or about November 19, 2002.

A Joint Statement of Answer was filed by Respondents Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc., Arthur H. Harter, III and Smith Barney Portfolio Management Group on or about January 16, 2003. Submission Agreement of Respondent Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc. was signed on or about January 16, 2003. Submission Agreement of Respondent Arthur H. Harter, III was signed on or about December 23, 2002. Submission Agreement of Respondent Smith Barney Portfolio Management Group was signed on or about March 11, 2003.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, failure to supervise, respondeat superior and violation of the Colorado Consumer Protection Act. The causes of action related to Claimants' allegations that Respondent Harter failed to set and adjust stop orders on various OTC stocks in a managed portfolio as agreed upon.

Respondents denied the allegations set forth in the Statement of Claim and asserted defenses including the following: Claimants' claims fails to state a claim upon which relief may be granted; Claimants are barred from recovery because they authorized, approved of and/or ratified all transactions complained of; Claimants are barred from recovery because they failed to timely complain in accordance with their client agreements; Claimants are barred from recovery by the doctrines of laches, waiver and estoppel; any losses allegedly sustained by Claimants were due to their own decision to buy, hold or sell the securities complained of; and Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc. did not fail to supervise, and acted in good faith in reliance upon Claimants' representations.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$35,670 in compensatory damages. In addition, Claimants requested an award that included punitive damages of \$107,010, interest, attorneys' fees and any other relief that the Panel deemed just and equitable.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees. In addition, Respondents asked fro the Panel to issue in its award a request for an expungement of Respondent Harter's registration records.

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

Prior to the commencement of the hearing, Claimants and Respondents entered into a confidential settlement agreement. Both sides submitted a Motion Requesting Expungement and proposed Stipulated Award for the Panel's consideration.

On or about June 19, 2003, NASD Dispute Resolution receive a stipulation from the parties to have just the chairperson execute the stipulated award and waived the right for the award to be executed by the three member Panel.

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 and the parties' submissions and representations, but w/o making any findings of fact or conclusions of law, the undersigned arbitrator orders as follows:

1. Claimants' claims, each and all, are dismissed pursuant to the parties settlement agreement;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Arthur H. Harter, III's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Arthur H. Harter, III must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief including punitive damages and attorneys' fees, by any party hereto are denied with prejudice.
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 the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 300.00

#### **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 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 = \$ 1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 2,750.00

### **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:

One (1) Pre-hearing session with Panel x \$ 1,125.00 = \$ 1,125.00

Pre-hearing conference: 05/20/2003 1 session

Total Forum Fees = \$ 1,125.00

The Arbitration Panel has assessed \$ 562.50 of the forum fees to Keith E. Dyas and the Dyas Revocable Trust, Keith and Sally Dyas TTEE.

The Arbitration Panel has assessed \$ 562.50 of the forum fees jointly and severally to Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc., Arthur H. Harter, III, and Smith Barney Portfolio Management Group.

### **Fee Summary**

Claimants, Keith E. Dyas and the Dyas Revocable Trust, Keith and Sally Dyas TTEE, is liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 562.50
<u>Total Fees</u>	= \$ 862.50
<u>Less payments</u>	= \$ 1,425.00
Balance Refunded By NASD Dispute Resolution	= \$ 562.50

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

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc., Arthur H. Harter, III, Smith Barney Portfolio Management Group, are jointly and severally liable for:

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Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

**ARBITRATION PANEL**

Donald P. Schwayder, Esq. - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

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Donald P. Schwayder, Esq.  
Public Arbitrator, Presiding Chair

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Signature Date


Forum Fees	= \$ 562.50
Total Fees	= \$ 562.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

**ARBITRATION PANEL**

Donald P. Schwayder, Esq. - Public Arbitrator, Presiding Chair

Arbitrator's Signature:

  
Donald P. Schwayder, Esq.  
Public Arbitrator, Presiding Chair

  
Signature Date