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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Fred Rosen

Case Number: 02-07517

Names of the Respondents  
Salomon Smith Barney, Inc.  
Dwayne Ross

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Fred Rosen, hereinafter referred to as "Claimant": John T. Getz, Esq., Law Offices of Feldman, Dickstein & Getz, LLP, North Miami Beach, Florida.

For Salomon Smith Barney, Inc. ("SSB") and Dwayne Ross ("Ross"), hereinafter collectively referred to as "Respondents": Richard L. Martens, Esq. and Matthew N. Thibaut, Esq., Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: December 5, 2002.

Claimant signed the Uniform Submission Agreement: November 6, 2002.

Statement of Answer filed by Respondents on or about: February 3, 2003.

Respondent SSB signed the Uniform Submission Agreement: February 24, 2003.

Respondent Ross signed the Uniform Submission Agreement: February 19, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) violations of state securities statutes; 2) breach of contract; 3) breach of NASD rules and regulations; 4) breach of fiduciary duty; 5) misrepresentations; 6) negligence; 7) respondent superior; and, 8) negligent supervision, hiring and retention of employees. The causes of action relate to the purchase of a variable annuity for Claimant's account.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, asserted various affirmative defenses and denied any liability for alleged monetary damages.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$75,000.00, interest at the legal rate from the date of purchase or reasonable market return, rescission of the annuity purchase, reasonable attorney's fees (to be

determined by a court of competent jurisdiction), costs and for such other relief as is just and proper.

Respondents requested that the Statement of Claim be dismissed in its entirety, with prejudice, and that all references to this matter be expunged from Respondent Ross' permanent NASD Central Registration Depository ("CRD") records.

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

On or about October 27, 2003, the parties informed NASD Dispute Resolution that they had settled this matter and submitted a Stipulation to Dismiss and Expunge Dwayne Ross' CRD records and proposed Stipulated Award.

The parties have agreed that the Stipulated Award in this matter may be entered in counterpart copies or that a signed handwritten Stipulated Award may be entered.

### **AWARD**

After considering the pleadings and the Stipulation to Dismiss and Expunge Dwayne Ross' CRD records and proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's withdrawal of his claims against Respondents with prejudice is accepted and Respondents are dismissed from this matter.

The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Ross' registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Ross must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, SSB is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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

**Adjournment Fees**

No requests for adjournments were filed in this matter.

**Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

**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:

One (1) Pre-hearing session with the Panel @ \$750.00	= \$750.00
Pre-hearing conference: June 16, 2003 1 session	
<hr/> Total Forum Fees	<hr/> = \$750.00

The Panel has assessed \$375.00 of the forum fees to Claimant.

The Panel has assessed \$375.00 of the forum fees jointly and severally to Respondents.

**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.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
<u>Forum Fees</u>	<u>= \$ 375.00</u>
Total Fees	= \$ 600.00
<u>Less payments</u>	<u>= \$ 600.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent SSB is solely liable for:

<u>Member Fees</u>	<u>= \$ 3,550.00</u>
Total Fees	= \$ 3,550.00
<u>Less payments</u>	<u>= \$ 3,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents SSB and Ross are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 375.00</u>
Total Fees	= \$ 375.00

<u>Less payments</u>	= \$	0.00
Balance Due NASD Dispute Resolution	= \$	375.00

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

**ARBITRATION PANEL**

<i>Myron E. Levenson</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Peter A. Cartwright, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Dennis J. Levin</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Myron E. Levenson  
Public Arbitrator, Presiding Chairperson

11/5/03  
Signature Date

/s/  
Peter A. Cartwright, Esq.  
Public Arbitrator

12/5/03  
Signature Date

/s/  
Dennis J. Levin  
Non-Public Arbitrator

11/16/03  
Signature Date

12/10/03  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No.02-07517  
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Less payments	= \$ 0.00
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Signature Date

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**RECEIVED**  
DEC 09 2003  
**FL ARBITRATION**

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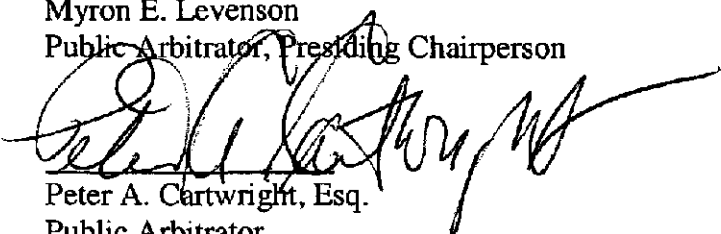
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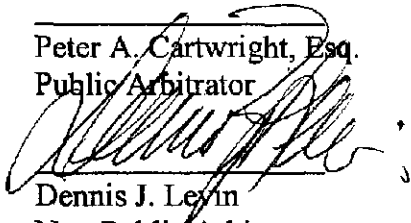
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