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

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 02-07788

Beverly Fleisig and Merrill F. Brotman, Co-Trustees

U/A/D 2/18/87

Beverly Fleisig Trustee of the Earl Fleisig Trust

U/A/D 2/18/87

Name of the Respondent

Hearing Site: Boca Raton, Florida

Salomon Smith Barney, Inc.

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Beverly Fleisig and Merrill F. Brotman, Co-Trustees U/A/D 2/18/87 and Beverly Fleisig Trustee of the Earl Fleisig Trust U/A/D 2/18/87, hereinafter referred to as "Claimants": Russell C. Silverglate, Esq., Dickenson, Murphy, Rex and Sloan P.A., Boca Raton, Florida.

For Salomon Smith Barney, Inc. ("SSB"), hereinafter referred to as "Respondent": Angelica Hunnefeld, Esq., Greenberg Traurig, P.A., Miami, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: December 20, 2002.

Claimants signed the Uniform Submission Agreement: November 30, 2002.

Statement of Answer filed by Respondent on or about: February 20, 2003.

Respondent signed the Uniform Submission Agreement: February 20, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) common law fraud; 2) breach of fiduciary duty; 3) violation of Florida's Prudent Investor Rule; 4) negligent failure to supervise; and, 5) negligence. The causes of action relate to the purchase and sale of various stocks in Claimants' accounts, including, but not limited to, Intel, JDS Uniphase, MCI Worldcom, Network Appliance, Siebel Systems, EMC Corp., Sun Microsystems, Novell, Solelectron, Intel and Qwest Communications.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$161,921.00, interest, costs, expenses and disbursements, including expert witness fees, punitive damages and for such other relief as the Panel deemed just and proper.

Respondent requested that the Statement of Claim be dismissed, an award of costs and that the Panel enter an order expunging this matter from the Central Registration Depository (the "CRD") record of David A. Waxman, the non-party financial consultant referred to within the Statement of Claim.

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

On March 26, 2004, the parties notified NASD Dispute Resolution that they had settled this matter and would be submitting a proposed Stipulated Award with a request for expungement of the NASD CRD record of non-party David A. Waxman.

On May 12, 2004, the parties submitted to NASD Dispute Resolution a Stipulated Motion for Award Directing Expungement, advising the Panel that the parties have resolved this matter and that, as part of the settlement, Claimants have agreed not to oppose Mr. Waxman's request for expungement. The parties also submitted a proposed Stipulated Award with a request for the expungement of the NASD CRD record of non-party David A. Waxman.

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, the Stipulated Motion for Award Directing Expungement and the proposed Stipulated Award, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

- 1) All Claimants' claims are dismissed, with prejudice.
- 2) The Panel recommends the expungement of all reference to the above captioned arbitration from David A. Waxman's public and non-public registration records maintained by the NASD CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, David A. Waxman must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 3) All parties will bear their own attorney's fees and costs.

### **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 = \$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. Accordingly, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

**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 @ \$1,125.00	= \$1,125.00
Pre-hearing conference: July 1, 2003 1 session	
Total Forum Fees	= \$1,125.00

The Panel has assessed \$562.50 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$562.50 of the forum fees to Respondent.

**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**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 562.50
Total Fees	= \$ 862.50
Less payments	= \$ 862.50
Balance Due NASD Dispute Resolution	= \$ 0.00

**Respondent is solely liable for:**

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 5,762.50
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 562.50

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

**ARBITRATION PANEL**

<i>Will Murphy, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Seth L. Finkel, Esq.</i>	-	<i>Public Arbitrator</i>
<i>James Conrad Sankpill</i>	-	<i>Non-Public Arbitrator</i>

### Concurring Arbitrators' Signatures

/s/  
Will Murphy, Esq.  
Public Arbitrator, Presiding Chairperson

05/18/04  
Signature Date

/s/  
Seth L. Finkel, Esq.  
Public Arbitrator

05/24/04  
Signature Date

/s/  
James Conrad Sankpill  
Non-Public Arbitrator

05/20/04  
Signature Date

05/26/04  
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

  
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Signature Date

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Seth L. Finkel, Esq.  
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Public Arbitrator, Presiding Chairperson

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Signature Date

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Seth L. Finkel, Esq.  
Public Arbitrator

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

  
James Conrad Sankpill  
Non-Public Arbitrator

*May 20, 2004*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)