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

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 03-01019

Horace M. Matthews  
Horace M. Matthews IRA Rollover  
Horace M. Matthews IRA

Names of the Respondents

Hearing Site: Boca Raton, Florida

Citigroup Global Markets, Inc.  
f/k/a Salomon Smith Barney, Inc.  
Glen Turner  
Keith Aebischer

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

**REPRESENTATION OF PARTIES**

For Horace M. Matthews, Horace M. Matthews IRA Rollover and Horace M. Matthews IRA, hereinafter collectively referred to as "Claimants": John T. Getz, Esq., Law Offices of Feldman, Dickstein & Getz, LLP, North Miami Beach, Florida. On or about July 13, 2005, John T. Getz, Esq. withdrew as counsel. Thereafter, Claimants appeared *pro se*.

For Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. ("Citigroup"), Glen Turner ("Turner") and Keith Aebischer ("Aebischer"), hereinafter collectively referred to as "Respondents": Joseph C. Coates, III, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: February 5, 2003.

Claimants signed the Uniform Submission Agreement on: January 31, 2003.

Statement of Answer filed by Respondents on or about: May 27, 2003.

Respondent Citigroup signed the Uniform Submission Agreement on: May 28, 2003.

Respondent Turner signed the Uniform Submission Agreement on: August 27, 2003.

Respondent Aebischer signed the Uniform Submission Agreement on: August 27, 2003.

### **CASE SUMMARY**

Claimants alleged the following causes of action: 1) violation of Section 517.301, Florida Statutes; 2) common law gross negligence and ordinary negligence; 3) breach of fiduciary duty; 4) misrepresentations and/or omissions; 5) unsuitable investment recommendations; 6) failure to supervise; and 7) *respondeat superior*. The causes of action relate to investments in various shares of mutual funds and stocks, including Abgenix, Inc.; Aurora BioSciences Corp.; Celgene Corp.; 12 Technologies, Inc.; NVIDIA Corp.; Plexus, Corp.; Power One, Inc.; Silicon Storage Technology, Inc.; Techne Corp.; Technirol, Inc.; and Toll Grade Communications, Inc.

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

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in an amount not less than \$400,000.00; 2) interest at the legal rate from the date of purchase or reasonable market return; 3) disgorgement of all commissions and fees, plus legal interest; 4) costs and expenses; 5) attorneys' fees in an amount to be determined by a court of competent jurisdiction; 6) punitive damages; and 7) such other relief the undersigned arbitrators (the "Panel") deemed just and proper.

Respondents requested: 1) dismissal of the Statement of Claim in its entirety; and 2) costs.

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

On or about May 12, 2004, the parties filed their joint motion to adjourn the evidentiary hearing scheduled for May 18 – 21, 2004 in order to mediate. Pursuant to Rule 10403 of the NASD Code of Arbitration Procedure (the "Code"), NASD Dispute Resolution adjourned the evidentiary hearing and waived the adjournment fee in the amount of \$1,125.00.

On or about July 15, 2005, Claimants filed their motion to adjourn the evidentiary hearing scheduled for August 2 – 4, 2005. On or about July 18, 2005, Respondents filed their response and lack of objection to the motion. On or about July 20, 2005, the Panel granted the request, adjourned the evidentiary hearing, waived the adjournment fee in the amount of \$1,125.00, and ordered Claimants to notify NASD Dispute Resolution of four sets of dates and times as to the parties' availability for a telephonic pre-hearing conference with the Panel during the first two weeks of September 2005. Claimants did not respond to the Panel's Order.

On or about November 16, 2005, the Panel ordered the parties, within ten days, to submit four sets of mutually agreeable dates to reschedule the evidentiary hearing or to show cause why the above-captioned arbitration should not be dismissed. The parties did not respond to the Panel's Order. On or about December 5, 2005, the Panel dismissed, without prejudice, Claimant's claims in their entirety.

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 and the Panel's Orders, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims, including claims under Chapter 517, Florida Statutes, are dismissed, without prejudice, in their entirety.
2. Any and all claims for relief, including punitive damages, costs and attorneys' fees, not specifically addressed herein are dismissed, without prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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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, Respondent Citigroup is a member firm and a party.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournments requested during these proceedings for which fees were assessed.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

There were no three-day cancellation fees assessed during these proceedings.

#### **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.

There were no injunctive relief fees assessed during these proceedings.

**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 Panel @ \$1,125.00 per session	= \$1,125.00
Pre-hearing conference: September 15, 2003 1 session	

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Total Forum Fees	= \$1,125.00
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The Panel has assessed forum fees in the amount of \$562.50 jointly and severally to Claimants.

The Panel has assessed forum fees in the amount of \$562.60 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.

There were no administrative costs incurred during these proceedings.

**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 Citigroup is solely liable for:

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

Respondents are jointly and severally liable for:

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

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

**ARBITRATION PANEL**

<i>Larry A. Feldman</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Gary Paul Whorton</i>	-	<i>Public Arbitrator</i>
<i>Bernard D. A'Mour</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Larry A. Feldman  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
December 7, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Gary Paul Whorton  
Public Arbitrator

\_\_\_\_\_  
December 8, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Bernard D. A'Mour  
Non-Public Arbitrator

\_\_\_\_\_  
December 7, 2005  
Signature Date

December 9, 2005  
Date of Service (For NASD Dispute Resolution office use only)

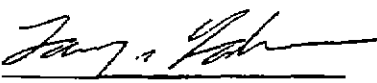
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Arbitration No. 03-01019  
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\_\_\_\_\_  
Larry A. Feldman  
Public Arbitrator, Presiding Chairperson

12-07-2005  
\_\_\_\_\_  
Signature Date

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Gary Paul Whorton  
Public Arbitrator

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

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Bernard D. A'Mour  
Non-Public Arbitrator

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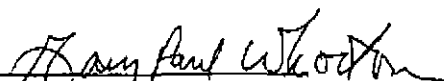
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12/7/05  
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Signature Date

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