

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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Donald P. Smith

Case Number: 03-01120

Names of the Respondents  
Citigroup Global Markets, Inc.  
f/k/a Salomon Smith Barney, Inc.  
Theodore A. Schwab

Hearing Site: Washington, D.C.

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

**REPRESENTATION OF PARTIES**

Claimant, Donald P. Smith, hereinafter referred to as "Claimant", was represented by John P. Connolly, Esq., Attorney at Law, Alexandria, Virginia.

Respondents, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. ("Citigroup") and Theodore A. Schwab ("Schwab"), hereinafter referred to as "Respondents", were represented by Gilbert W. Boyce, Esq., Kutak Rock, LLP, Washington, D.C.

**CASE INFORMATION**

Statement of Claim filed on February 14, 2003.

Claimant signed the Uniform Submission Agreement on February 4, 2003.

Statement of Answer filed by Respondents on April 21, 2003.

A representative of Respondent Citigroup signed the Uniform Submission Agreement on April 21, 2003.

Respondent Schwab did not file a Uniform Submission Agreement with NASD Dispute Resolution.

**CASE SUMMARY**

In the Statement of Claim, Claimant asserted the following causes of action, among others: violation of Section 10(b) and Section 20 (a) of the Securities Exchange Act of 1934, violation of S.E.C. Rule 10b-5, failure to supervise, breach of fiduciary duty, fraud, deceit, violation of the NASD Rules of Fair Practice, violation of the Virginia Securities Act, and breach of contract. The causes of action relate to the purchase and sale of Tenet Healthcare, Inc. common stock and Salomon Smith Barney Tax Advantage Exchange Fund II, L.L.C.

Unless specifically admitted in their Statement of Answer, Respondents denied the allegations

made in the Statement of Claim.

### **RELIEF REQUESTED**

Claimant in the Statement of Claim requested:

Compensatory Damages	\$ 2,400,000.00
Punitive Damages	\$ 350,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents requested that the Statement of Claim be dismissed and that they be awarded costs.

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

Respondent Schwab did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim and appeared and testified at the hearing, is bound by the determination of the Arbitration Panel (the "Panel") on all issues submitted.

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

1. Claimant's claims are denied in their entirety;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### **FEES**

Pursuant to 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 = \$ 500.00

### 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 Citigroup is a party.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

May 4-7, 2004, adjournment by Respondents	= \$ 1,200.00
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### 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 sessions with a single arbitrator @ \$ 450.00	= \$ 450.00
Pre-hearing conference: April 8, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$ 1,200.00	= \$ 1,200.00
Pre-hearing conference: October 29, 2003 1 session	

Eight (8) Hearing sessions @ \$ 1,200.00	= \$ 9,600.00
Hearing Dates: December 14, 2004 2 sessions	
December 15, 2004 2 sessions	
December 16, 2004 2 sessions	
December 17, 2004 2 sessions	

Total Forum Fees	= \$ 11,250.00
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1. The Panel has assessed \$ 5,625.00 of the forum fees to Claimant.
2. The Panel has assessed \$ 5,625.00 of the forum fees jointly and severally to Respondents.

### Fee Summary

1. Claimant is assessed and shall pay:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 5,625.00
Total Fees	= \$ 6,125.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 4,425.00

2. Respondent Citigroup is assessed and shall pay:

<u>Member Fees</u>	= \$ 8,550.00
<u>Total Fees</u>	= \$ 8,550.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally assessed and shall pay:

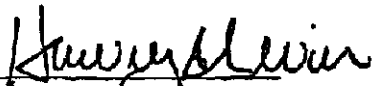
<u>Adjournment Fees</u>	= \$ 1,200.00
<u>Forum Fees</u>	= \$ 5,625.00
<u>Total Fees</u>	= \$ 6,825.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 6,825.00

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

ARBITRATION PANEL

Harvey A. Levin, Esq.	-	Public Arbitrator, Presiding Chairperson
Robert S. Plotkin	-	Public Arbitrator, Panelist
C. Gregory Ellison	-	Non-Public Arbitrator, Panelist

**Concurring Arbitrators' Signatures**

  
Harvey A. Levin, Esq.  
Public Arbitrator, Presiding Chairperson

1/12/05  
Signature Date

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Robert S. Plotkin  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
C. Gregory Ellison  
Non-Public Arbitrator, Panelist

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

January 13, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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Harvey A. Levin, Esq.

Public Arbitrator, Presiding Chairperson

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Signature Date:



Robert S. Plotkin

Public Arbitrator, Panelist

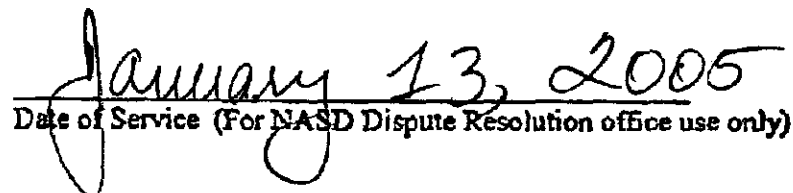


Signature Date:

\_\_\_\_\_  
C. Gregory Ellison

Non-Public Arbitrator, Panelist

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