

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

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In the Matter of the Arbitration Between:

Lawrence D. Fagundes, Debbie E. Fagundes, Larry Fagundes IRA, Debbie E. Fagundes,  
Custodian for the Logun D. Fagundes U/CA/UTMA, and Debbie E. Fagundes, Custodian for the  
Dakota E. Fagundes U/CA/UTMA, Claimants v. Citigroup Global Markets, Inc. f/k/a Salomon  
Smith Barney, Inc. and Tracy R. Turner, Respondents

Case Number: 03-01356

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Lawrence D. Fagundes  
In Propria Persona  
San Jose, California

For Respondents:

Paul Schumacher, Esq.  
Jennifer J. Ohrenberger, Esq.  
Bingham McCutchen  
Los Angeles, California

**CASE INFORMATION**

Statement of Claim filed: February 19, 2003

Claimants Larry Fagundes and Larry Fagundes IRA's Uniform Submission Agreement signed:  
February 15, 2003

Claimants Debbie E. Fagundes, Debbie E. Fagundes, Custodian for the Logun D. Fagundes  
U/CA/UTMA, and Debbie E. Fagundes, Custodian for the Dakota E. Fagundes U/CA/UTMA's  
Uniform Submission Agreement signed: March 21, 2003

Joint Statement of Answer and Motion to Dismiss filed by Respondents: June 5, 2003

Respondent Citigroup Global Markets, Inc.'s Uniform Submission Agreement signed:  
May 1, 2003

Respondent Tracy R. Turner's Uniform Submission Agreement signed: May 10, 2003

### **CASE SUMMARY**

Claimants alleged unauthorized trading and unsuitable investments. Claimants also allege their risk profile was changed without their knowledge. The claim involved various unspecified securities investments.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested unspecified compensatory damages.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

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

On May 6, 2003, Claimants signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On July 15, 2003, Respondents' counsel signed a Waiver Agreement on behalf of Respondents expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On June 5, 2003, Respondents filed a Motion to Dismiss the Statement of Claim. On November 3, 2003, the Panel held a pre-hearing conference to hear oral arguments on the Motion to Dismiss. The Panel's ruling is contained in the Award below.

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 hearing oral argument on Respondents' Motion to Dismiss, the Panel decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Motion to Dismiss is granted.
2. Claimants' Statement of Claim is dismissed with prejudice.
3. The parties shall bear their respective costs, including attorney's fees.
4. All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 250.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Citigroup Global Markets, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,500.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,200.00</u>
<b>Total Member Fees</b>	<b>= \$ 4,450.00</b>

#### **Forum Fees and Assessments**

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Chair/Panel. The following fees are assessed:

Two (2) Pre-hearing conference session with the Panel @ \$1,000.00/session	= \$ 2,000.00
Pre-hearing conferences:     October 29, 2003     1 session	
November 3, 2003     1 session	

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<b>Total Forum Fees</b>	<b>= \$ 2,000.00</b>
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1. The Panel assessed \$2,000.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

1. Claimant are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 250.00
<u>Less payments</u>	<u>= \$(1,575.00)</u>
<b>Refund Due from NASD Dispute Resolution</b>	<b>= \$( 1,325.00)</b>
  
2. Respondent Citigroup Global Markets, Inc. is charged with the following fees and costs:

Member Fees	= \$ 4,450.00
<u>Less payments</u>	<u>= \$( 4,450.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>
  
3. Respondents Citigroup Global Markets, Inc. and Tracy R. Turner are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 2,000.00
<u>Less payments by Citigroup Global Markets, Inc.</u>	<u>= \$( 50.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,950.00</b>

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

ARBITRATION PANEL

Helen Marinak Blohm, Esq.	-	Public Arbitrator, Presiding Chair
Peter Bralbee	-	Public Arbitrator
Donald S. Duerson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Helen Marinak Blohm, Esq.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
Peter Bralbee  
Public Arbitrator

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

  
Donald S. Duerson  
Non-Public Arbitrator

11-26-03  
Signature Date

11/28/03  
Date of Service

ARBITRATION PANEL

Helen Marinak Blohm, Esq.	-	Public Arbitrator, Presiding Chair
Peter Bralbee	-	Public Arbitrator
Donald S. Duerson	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Helen Marinak Blohm, Esq.  
Chair, Public Arbitrator

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

\_\_\_\_\_  
*Peter Bralbee*  
Peter Bralbee  
Public Arbitrator

\_\_\_\_\_  
*November 28 2003*  
Signature Date

\_\_\_\_\_  
Donald S. Duerson  
Non-Public Arbitrator

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

\_\_\_\_\_  
*11/28/03*  
Date of Service

**ARBITRATION PANEL**

Helen Marinak Blohm, Esq.	-	Public Arbitrator, Presiding Chair
Peter Bralbee	-	Public Arbitrator
Donald S. Duerson	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Helen M. Blohm

Helen Marinak Blohm, Esq.  
Chair, Public Arbitrator

11/29/03  
Signature Date

Peter Bralbee  
Public Arbitrator

Signature Date

Donald S. Duerson  
Non-Public Arbitrator

Signature Date

Date of Service