

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Ronald D. Smith, Claimant v. Salomon Smith Barney, Inc. nka Citigroup Global Markets, Inc.,  
and Philip J. Cunningham, Respondents

Case Number: 03-01399

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimant:

Mitchell S. Ostwald, Esq.  
The Law Offices of Mitchell S. Ostwald  
Sacramento, California

For Respondents:

Gordon C. Young, Esq.  
Jody Willson, Esq.  
Keesal, Young & Logan  
San Francisco, California

**CASE INFORMATION**

Statement of Claim filed: February 25, 2003

Claimant's Uniform Submission Agreement signed: February 25, 2003

Joint Statement of Answer filed by Respondents Salomon Smith Barney, Inc. nka Citigroup  
Global Markets, Inc. ("Smith Barney") and Philip J. Cunningham: April 16, 2003

Respondent Smith Barney's Uniform Submission Agreement signed: April 16, 2003

Respondent Philip J. Cunningham's Uniform Submission Agreement signed: March 31, 2003

### **CASE SUMMARY**

Claimant alleged the following claims with respect to investments in various securities, including but not limited to, investments in Qualcomm, NX Networks, Lucent, Worldcom, Cisco and JDS Uniphase: 1) Breach of Fiduciary Duty; 2) Fraud; 3) Constructive Fraud (Civil Code Section 1573); 4) Failure to Supervise; and 5) Violation of Federal and State Securities Laws; NASD Rules of Fair Practice and NYSE Rules.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statement of Claim and raised various affirmative defenses.

Claimant and Respondents have reached a settlement whereby they have agreed upon this Stipulated Award as part of that settlement which includes expungement of Mr. Cunningham's CRD records.

### **RELIEF REQUESTED**

Claimant requested:

1. Compensatory damages in an amount according to proof, but not less than \$900,000.00;
2. Interest;
3. Punitive damages;
4. Attorney's fees and costs; and
5. Such other relief as the arbitration panel deems just and proper.

Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, an award of costs and an expungement of the Claim from Mr. Cunningham's CRD records.

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

On June 17, 2003, Claimant and Claimant's counsel 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimant shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

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

### **STIPULATION**

It is hereby stipulated by Claimant and Respondents, through their undersigned attorneys of record, that:

1. All of Claimant's claims asserted against the Respondents are hereby dismissed with prejudice.
2. Claimant does not object to the Panel rendering the following award:

The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Philip J. Cunningham's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, said Respondent must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

3. Each party will bear its own costs, including attorney's fees, except that Smith Barney will bear all of the forum costs or fees charged by the NASD in connection with any proceedings that occur in connection with this Stipulation, including any that occur in connection with Smith Barney's effort to obtain expungement of this matter from Mr. Cunningham's CRD records.

### **AWARD**

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

1. This arbitration claim is dismissed with prejudice against all Respondents.
2. The Panel recommends the expungement of all reference to this arbitration from Respondent Philip J. Cunningham's registration records maintained by the CRD with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Philip J. Cunningham must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Each party will bear its own costs, including attorney's fees, except that Smith Barney will bear all of the forum costs or fees charged by the NASD in connection with any proceedings that occur in connection with this Stipulation, including any that occur in connection with Smith Barney's effort to obtain expungement of this matter from Mr. Cunningham's CRD records.
4. All other relief 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	= \$ 375.00
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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 which gave rise to the dispute, claim, or controversy. Accordingly, the member firm Smith Barney is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

#### **Adjournment Fees**

Respondent Smith Barney agreed to pay the \$1,200.00 postponement fee in connection with the postponed hearing dates of April 19-22, 2004.

#### **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:

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: August 21, 2003	1 session
September 26, 2003	1 session
<b>Total Forum Fees</b>	<b>= \$ 2,400.00</b>

1. The Panel assessed \$600.00 of the forum fees to Claimant.
2. The Panel assessed \$1,800.00 of the forum fees to Respondent, Smith Barney.

**Fee Summary**

1. Claimant is charged with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 600.00
Total Fees	= \$ 975.00
Less payments	= \$ (1,575.00)
Refund Due Claimant	= \$ (600.00)

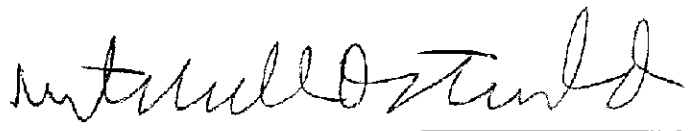
2. Respondent Smith Barney is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 1,800.00
Adjournment Fee	= \$ 1,200.00
Total Fees	= \$ 10,000.00
Less payments	= \$(12,200.00)
Refund Due Smith Barney	= \$ (2,200.00)

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.

**Parties' Signatures**

Dated: 7-16-04

  
\_\_\_\_\_  
Mitchell S. Ostwald  
The Law Offices of Mitchell S. Ostwald  
Attorney for RONALD D. SMITH

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gordon C. Young  
Jody Willson  
Keesal, Young & Logan  
Attorneys for CITIGROUP GLOBAL MARKETS,  
INC. F/K/A SALOMON SMITH BARNEY D/B/A  
SMITH BARNEY and PHILIP J. CUNNINGHAM

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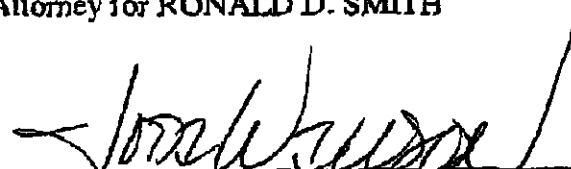
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Dated: \_\_\_\_\_

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Mitchell S. Ostwald  
The Law Offices of Mitchell S. Ostwald  
Attorney for RONALD D. SMITH

Dated: 9-14-04

  
\_\_\_\_\_  
Gordon C. Young  
Jody Willson  
Keesal, Young & Logan  
Attorneys for CITIGROUP GLOBAL MARKETS,  
INC. F/K/A SALOMON SMITH BARNEY D/B/A  
SMITH BARNEY and PHILIP J. CUNNINGHAM

**ARBITRATION PANEL**

Glen L. Moss	-	Public Arbitrator, Presiding Chair
Joseph Berzok, J.D.	-	Public Arbitrator
Richard B. Bullock	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Glen L. Moss  
Chair, Public Arbitrator

11 February 2005  
Signature Date

\_\_\_\_\_  
Joseph Berzok, J.D.  
Public Arbitrator

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

\_\_\_\_\_  
Richard B. Bullock  
Non-Public Arbitrator

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

2/16/05  
Date of Service

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Chair, Public Arbitrator

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\_\_\_\_\_  
Joseph Berzok, J.D.  
Public Arbitrator

9/21/04  
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Signature Date

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Richard B. Bullock  
Non-Public Arbitrator

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Signature Date

  
\_\_\_\_\_  
Richard B. Bullock  
Non-Public Arbitrator

2/10/05  
\_\_\_\_\_  
Signature Date

2/16/05  
\_\_\_\_\_  
Date of Service