

**STIPULATED AWARD  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

James Franklin, Individually and  
on Behalf of his IRA

and

Case Number: 03-01455  
Hearing Site: Detroit, Michigan

Respondents

Salomon Smith Barney, Inc. n/k/a Citigroup  
Global Markets, Inc., and Sherwyn Jimmy Mistry

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**NATURE OF DISPUTE**

Customer v. Member and Associated Person

**REPRESENTATION OF PARTIES**

James Franklin, Individually and on behalf of his IRA ("Claimant") was represented by Christopher H. Tovar, Esq., Shepherd Smith & Edwards, L.L.C., Houston, Texas.

Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. ("Citigroup") and Sherwyn Jimmy Mistry ("Mistry") were represented by Tina L. Winer, Esq., and Winnie J. Kuo, Esq., Neal, Gerber & Eisenberg, Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about February 28, 2003. The Amended Statement of Claim was filed on or about March 25, 2004. The Submission Agreement of James Franklin was signed on or about January 28, 2003.

The Statement of Answer was filed jointly by Respondents on or about June 18, 2003. The Statement of Answer to Claimant's Amended Statement of Claim was filed jointly on or about April 30, 2004. The Submission Agreement of Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc., was signed on or about June 18, 2003.

The Submission Agreement of Sherwyn Jimmy Mistry was signed on or about June 11, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; unauthorized transactions; misrepresentations and omissions regarding investment risks; breach of contract and warranties; promissory estoppel, violations of Section 451 of Michigan Compiled Laws, violation of NASD and NYSE Rules; unjust enrichment; breach of fiduciary duty; breach of duty of good faith and fair dealing; negligence; respondeat superior, and vicarious liability for aiding and abetting; and failure to supervise with respect to investments made in various securities. The causes of action related to a mixture of equities including ALCOA, AT&T, and Kraft Foods, which Claimant asserted was inappropriate for his investment goals.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: failure to state a claim; speculative and/or not cognizable damages; absence of proximate causation, statute of limitations; failure to mitigate; legal and equitable estoppel; and unavailability of attorneys' fees and/or punitive damages.

### **RELIEF REQUESTED**

Claimant requested an award in the amount between of \$100,000.00 - \$500,000.00, plus punitive damages, interest, costs, attorneys' fees, and other damages the panel deemed appropriate.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

The panel granted Claimant's oral request to amend the Statement of Claim on or about March 16, 2004.

Any and all claims asserted in this matter against Respondent Sherwyn Jimmy Mistry have been withdrawn by Claimant at his election and are hereby dismissed with prejudice. The parties have further agreed to entry of this Award, which provides for the expungement of all references to this arbitration from the registration records of Sherwyn Jimmy Mistry by the NASD Central Registration Depository.

The parties accepted the composition of the panel.

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrators order as follows:

- 1.) Claimant's claims, having been withdrawn, are dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent Sherwyn Jimmy Mistry's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent Sherwyn Jimmy Mistry must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **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 = \$ 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. In this matter, the member firm is Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc.

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

### **Forum Fees and Assessments**

The Panel has assessed forum fees for each hearing session conducted and each decision rendered on a discovery-related motion on the papers. A hearing 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 session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: March 16, 2004 1 session	
One (1) Pre-hearing session with Panel x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: September 17, 2003 1 session	
<b>Total Forum Fees</b>	<b>= \$ 1,575.00</b>

The Arbitration Panel has assessed \$787.50 of the forum fees to James Franklin.

The Arbitration Panel has assessed \$787.50 of the forum fees jointly and severally to Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc., and Sherwyn Jimmy Mistry.

### **Fee Summary**

Claimant, James Franklin, is liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 787.50
<b>Total Fees</b>	<b>= \$ 1,087.50</b>
<b>Less payments</b>	<b>= \$ 1,425.00</b>
<b>Balance refunded by NASD Dispute Resolution</b>	<b>= \$ 337.50</b>

Respondent, Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc., is liable for:

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

Respondents, Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc., and Sherwyn Jimmy Mistry, are jointly and severally liable for:

Forum Fees	= \$ 787.50
<b>Total Fees</b>	<b>= \$ 787.50</b>
<b>Less payments</b>	<b>= \$ 787.50</b>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 0.00</b>

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

**ARBITRATION PANEL**

Stewart C. W. Weiner, Esq. - Public Arbitrator, Presiding Chair  
David L. Tornga, Esq. - Public Arbitrator  
Brace K. Case, Esq. - Public Arbitrator

Concurring Arbitrators:

/s/ Stewart C.W. Weiner, Esq.  
Stewart C. W. Weiner, Esq.  
Public Arbitrator, Presiding Chair

03/14/06  
Signature Date

/s/ David L. Tornga, Esq.  
David L. Tornga, Esq.  
Public Arbitrator

Signature Date

/s/ Brace K. Case, Esq.  
Brace K. Case, Esq.  
Public Arbitrator

03/14/06  
Signature Date

03/14/06  
Date of Service (For NASD office use only)

03/14/06 TUE 10:45 FAX

NASD REGULATION


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Arbitration No. 03-01455  
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**ARBITRATION PANEL**

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David L. Tomnga, Esq. - Public Arbitrator  
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Arbitration No. 03-01455  
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NASD REGULATION

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