

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

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In the Matter of the Arbitration Between:

Name of the Claimants

John and Marianne Marienski,  
Individually and as Custodians of their  
IRA and SEP IRA accounts

Case Number: 03-01796

Name of the Respondents

Salomon Smith Barney, Inc.  
n/k/a Citigroup Global Markets, Inc.  
Robert F. Manning

Hearing Site: Philadelphia, PA

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Nature of the Dispute: Customers v. Member Firm and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant, John and Marianne Marienski, individually and as custodians of their IRA and SEP IRA accounts, hereinafter collectively referred to as "Claimants", were represented by Michael Knoll, Esq., Law Offices of Michael Knoll, Ossining, New York.

Respondents, Salomon Smith Barney n/k/a Citigroup Global Markets, Inc. ("SSB") and Robert F. Manning ("Manning"), hereinafter referred to as Respondents, were represented at the hearing by Lee A. Rosengard, Esq. and Christine Debevec, Esq., Stradley, Ronon, Stevens & Young, LLP, Philadelphia, Pennsylvania.

**CASE INFORMATION**

Statement of Claim filed on March 11, 2003.

Claimants signed the Uniform Submission Agreement on January 9, 2003.

Statement of Answer filed by Respondents on May 22, 2003.

Respondents did not file Uniform Submission Agreements with NASD Dispute Resolution.

**CASE SUMMARY**

Claimants asserted the following causes of action, among others: breach of contract, negligence, fraud, failure to supervise, breach of fiduciary duty, misrepresentations/non-disclosures, omission of facts, and suitability. The causes of action relate to the purchase and sale of common stock, mutual funds, preferred stock, and other securities including Cisco, EMC and SunMicrosystems stock.

Unless specifically admitted their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: that Claimants were

responsible for any losses in the accounts; Respondent Manning's duties in the accounts were limited; Claimants had a duty to read all documentation, to monitor all activity in the accounts, and to protest irregularities in their accounts; and failure to mitigate losses

### **RELIEF REQUESTED**

Claimants in their Statement of Claim requested:

Compensatory Damages	\$ 517,283.00
Punitive Damages	amount unspecified
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that Claimants' claims be dismissed in their entirety.

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

Respondents SSB and Manning did not file with NASD Dispute Resolution, a properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, are bound by the determination of the Arbitration Panel (the "Panel") on all issues submitted.

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.

### **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. Claimants' claims are denied in their entirety;
2. Claimants' claims for punitive damages are denied in their entirety;
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Manning's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Manning must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
4. The parties shall bear their respective costs, including attorney's fees, except as Fees are specifically addressed below; and,

5. Any and all relief not specifically addressed herein 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	= \$ 375.00
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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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent SSB is a party.

Member surcharge	= \$ 2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 4,000.00
Total Member Fees	= \$ 7,000.00

#### 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 session with a single arbitrator @ \$ 450.00	= \$ 450.00
Pre-hearing conference: February 24, 2004 1 session	

One (1) Pre-hearing session with Panel @ \$ 1,200.00	= \$ 1,200.00
Pre-hearing conference: November 3, 2003 1 session	

Five (5) Hearing sessions @ \$ 1,200.00	= \$ 6,000.00
Hearing Dates: March 1, 2004 2 sessions	
March 2, 2004 2 sessions	
March 3, 2004 1 session	

Total Forum Fees	= \$ 7,650.00
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The Panel has assessed \$ 7,650.00 of the forum fees to Respondent SSB.

### **EEE SUMMARY**

1. Claimants, John and Marianne C. Marienski, are assessed and shall pay the following fees:

Initial Filing Fee	= \$ 375.00
Total Fees	= \$ 375.00
Less payments	= \$ 1,575.00

Refund owed to Claimants = \$ 1,200.00

2. Respondent, SSB, is assessed and shall pay the following fees:

Member Fees	= \$ 7,000.00
<u>Forum Fees</u>	<u>= \$ 7,650.00</u>
Total Fees	= \$ 14,650.00
<u>Less payments</u>	<u>= \$ 7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,650.00

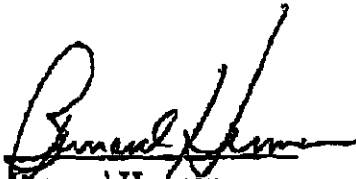
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Bernard Herman	-	Public Arbitrator, Presiding Chairperson
Catherine Stewart, Esq.	-	Public Arbitrator, Panelist
Dean L. Scarpa	-	Non-Public Arbitrator, Panelist

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Arbitration No. 03-01796  
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Concurring Arbitrators' Signatures



Bernard Hernan  
Public Arbitrator, Presiding Chairperson

March 8, 2004  
Signature Date

Catherine Stewart, Esq.  
Public Arbitrator, Panelist

Signature Date

Dean L. Scarpa  
Non-Public Arbitrator, Panelist

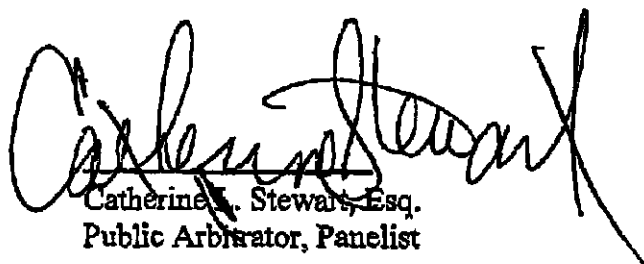
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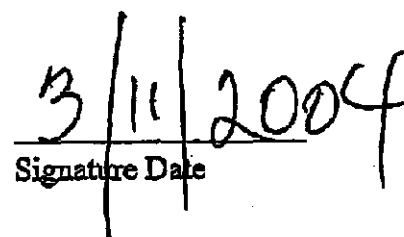
March 12, 2004  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Bernard Herman  
Public Arbitrator, Presiding Chairperson

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

  
Catherine L. Stewart, Esq.  
Public Arbitrator, Panelist

  
Signature Date

\_\_\_\_\_  
Dean L. Scarpa  
Non-Public Arbitrator, Panelist

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Signature Date

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Concurring Arbitrators' Signatures

Bernard Herman  
Public Arbitrator, Presiding Chairperson

Signature Date

Catherine Stewart, Esq.  
Public Arbitrator, Panelist

Signature Date

  
Dean I. Scarpa  
Non-Public Arbitrator, Panelist

3-9-04  
Signature Date

March 12, 2004  
Date of Service (For NASD Dispute Resolution office use only)