

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Charles Schwab & Co., Inc., Claimant v. Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., Mari Vanderhoff, Joyce Lynn Mills and Bud Scott, Respondents

Case Number: 03-02141

Hearing Site: Seattle, Washington

Nature of dispute: Member Firm v. Member Firm, Associated Persons and Non-Member

REPRESENTATION OF PARTIES

For Claimant:

Todd Reuter, Esq.
Preston Gates & Ellis LLP
Spokane, Washington

Steve Murphy, Esq.
Charles Schwab & Co., Inc.
San Francisco, California

For Respondent
Citigroup Global Markets, Inc.
f/k/a Salomon Smith Barney, Inc.:

Eric D. Lansverk, Esq.
Hillis Clark Martin & Peterson, PS
Seattle, Washington

For Respondents
Mari Vanderhoff
and Bud Scott:

David J. Groesbeck, Esq.
Randall & Danskin, P.S.
Spokane, Washington

For Respondent
Joyce Lynn Mills:

Dennis P. Hession, Esq.
Richter-Wimberly, P.S.
Spokane, Washington

CASE INFORMATION

Initial Statement of Claim filed: March 24, 2003

Claimant's First Amended Statement of Claim filed: May 28, 2003

Claimant's Second Amended Statement of Claim filed: June 24, 2003

Claimant's Uniform Submission Agreement signed: June 27, 2003

Joint Statement of Answer to Claimant's Statements of Claim filed by Respondents:
August 5, 2003

Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. s' Uniform
Submission Agreement signed: June 24, 2003

Respondent Mari Vanderhoff's Uniform Submission Agreement signed: August 6, 2003

Respondent Joyce Lynn Mills' Uniform Submission Agreement signed: August 6, 2003

Respondent Bud Scott's Uniform Submission Agreement: Not signed

CASE SUMMARY

Claimant's First Amended and Second Amended Statements of Claim alleged breach of contract, breach of implied covenant of good faith, misappropriation of trade secrets, fraud, intentional interference with business relations, civil conspiracy and violation of the Computer Fraud and Abuse Act, 18 U.S.C. §1030. The allegations involved conduct during and after Respondent Mari Vanderhoff's employment with Claimant Charles Schwab & Co., Inc.

At the hearing the Claimant alleged that in early 2002 Respondent Mari Vanderhoff resigned from the Coeur d'Alene office of Claimant Charles Schwab & Co., Inc. and accepted employment at the Coeur d'Alene office of Respondent Salomon Smith Barney, Inc. Claimant alleged that Respondent Mari Vanderhoff committed breach of contract, breach of the implied contractual duty of good faith and fair dealing, breach of the duty of loyalty, committed violations of the Computer Fraud and Abuse Act, 18 U.S.C. §1030, tortiously interfered with Claimant's business relations with its clients, and misappropriated trade secrets. Claimant also alleged that Respondent Joyce Lynn Mills, an employee at Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc.'s Coeur d'Alene office, assisted Respondent Mari Vanderhoff in committing the above violations, and alleged that, by so doing, Respondent Joyce Lynn Mills committed tortious interference with Claimant's business relationships, misappropriation of trade secrets, and violations of the Computer Fraud and Abuse Act 18 U.S.C. §1030. Claimant further alleged that Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc.'s Coeur d'Alene Office Branch Manager failed to properly supervise Respondents Joyce Lynn Mills and Mari Vanderhoff, that Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. is vicariously liable for such alleged failure to supervise, and also that Respondent

Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. committed tortious interference and misappropriation of trade secrets.

Respondents denied the allegations of wrongdoing set forth in the Claimant's Statements of Claim and asserted several affirmative defenses.

RELIEF REQUESTED

Claimant's First Amended and Second Amended Statements of Claim requested an Award of a permanent injunction enjoining Respondents from: (1) soliciting or contacting any of Claimant's clients that Respondent Vanderhoff serviced; (2) using, transmitting, or otherwise disclosing confidential and proprietary information contained in the records or files of Claimant; and (3) destroying or altering any information related to the facts at issue in this matter. Claimant also requested the return of all of Claimant's information in possession or custody of Respondents, unspecified compensatory damages, exemplary damages, punitive damages, and attorney's fees.

As summarized in closing argument at the hearing, Claimant requested an Award of (1) a permanent injunction, identical in content to the Preliminary Injunction Order issued by the United States District Court for the District of Idaho in Cause No. CV-03-0117N EJJ on March 31, 2003, against all Respondents for an additional two year period (i.e., until March 2006); (2) compensatory damages in an amount sufficient to compensate Claimant for clients whose business allegedly has been lost in the past or will be lost in the foreseeable future due to the alleged violations; (3) an Award of punitive and exemplary damages to deter Respondents from similar violations in the future; (4) an Award of attorney's fees and costs; and (5) a determination that the Award be joint and several among all of the Respondents.

Respondents' Answer requested dismissal of the Claimant's claims in their entirety and an award of costs, including attorney's fees.

As summarized in closing arguments at the hearing, Respondents requested dismissal of the Claimant's claims in their entirety, and denial of all claims for damages, attorney's fees, and costs. Respondents contended that the only appropriate injunctive relief would be a limited "no contact" injunction against Respondent Mari Vanderhoff as to certain specified individuals.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant submitted its Initial Statement of Claim on March 24, 2003. The First Amended Statement of Claim was received on May 28, 2003 prior to service of the Initial Statement of Claim. The Respondents were served with the First Amended Statement of Claim.

The Claimant initially filed this matter pursuant to Code of Arbitration Procedure Rule 10335. On March 31, 2003, the United States District Court for the District of Idaho in Cause No. CV-03-0117N EJJ issued a Preliminary Injunction Order. On April 14, 2003, the parties notified NASD

Dispute Resolution staff, by way of stipulation, of their desire to not proceed under Code of Arbitration Procedure Rule 10335. The parties agreed that the injunction order issued would govern the parties' conduct until the conclusion of this matter.

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, testimony, evidence presented at the hearing and the post-hearing submissions of the parties, the Arbitration Panel decided in full and final resolution of all issues submitted for determination as follows:

I. Certain Claims Allowed.

A. Respondent Mari Vanderhoff committed breaches of her Confidentiality Agreement with Claimant Charles Schwab & Co., Inc.

1. Prior to her departure from Claimant Charles Schwab & Co., Inc., by using confidential Charles Schwab & Co., Inc. information, in part, to prepare a handwritten list of Charles Schwab & Co., Inc. clients for a purpose other than promotion of Charles Schwab & Co., Inc.'s business; and
2. After her departure from Claimant Charles Schwab & Co., Inc. and during her employment with Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. by using that list to direct mailings of notices that she had relocated to Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., and making follow-up phone calls to the same effect, to Charles Schwab & Co., Inc. clients on the list. The notices so mailed were in a "wedding announcement" format that, standing alone, was not improper. Use of the list to direct distribution of the mailings and phone contacts, however, was a breach of Respondent Mari Vanderhoff's Confidentiality Agreement with Claimant Charles Schwab & Co., Inc.

B. Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. failed to supervise Respondent Mari Vanderhoff as required by applicable NASD regulations because, upon hiring her, the Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. Branch Manager, Mr. Michael Armon, permitted Respondent Mari Vanderhoff to use Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. facilities to send the mailings and make the telephone contacts referenced above without (1) inquiring of her whether she had a Confidentiality Agreement with her former employer, Claimant Charles Schwab & Co., Inc., and (2) making reasonable inquiry as to whether the sources

of the information used by Respondent Mari Vanderhoff to assemble her list of contacts were consistent with her contractual duties to her former employer.

- C. Claimant Charles Schwab & Co., Inc. did not sustain its burden of proving that the conduct referenced above has caused it to suffer any monetary damages as of the date of the Arbitration Hearing. Rather, the evidence presented at the hearing established that as of the most recent date for which evidence was introduced, only an inconsequential number of Claimant's clients had transferred to Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc.'s Coeur d'Alene office following Respondent Mari Vanderhoff's employment there. Most of the clients who did so transfer were not listed on the improperly prepared list. Claimant did not prove by a preponderance of the evidence that the transfers of the others were proximately caused by the misconduct found above.
- D. Claimant also did not sustain its burden of proving that the conduct referenced above will cause it to suffer monetary damages in the future. Approximately one year has now passed since Respondent Mari Vanderhoff left Claimant Charles Schwab & Co., Inc. As discussed above, Claimant failed to prove that it has sustained any monetary damages during that time period. Claimant chose to close its Coeur d'Alene office in August 2003 and stipulated during these proceedings that its decision to do so was not caused by any misconduct of Respondents. The expert testimony offered by Claimant's witness, Mr. Charles Lau, in support of Claimant's claim for recovery of such future damages was impermissibly speculative and, as a result, unpersuasive.
- E. The appropriate remedy for the misconduct referenced above is injunctive relief, as follows: (1) The injunction issued by the United States District Court for the District of Idaho, in Cause No. 03-CV-0117N-EJL, shall continue in full force and effect until April 30, 2004, at which time it shall be vacated and thereafter be of no further force or effect. (2) Effective April 30, 2004, that injunction shall be replaced with a more limited injunction that enjoins Respondents Mari Vanderhoff and Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., for a period of one year, expiring on April 30, 2005, from (a) soliciting, and (b) contacting for the purpose of obtaining business, any current Schwab clients whose names are contained on the list improperly prepared by Respondent Mari Vanderhoff. In addition, during the period of the injunction, Respondents Mari Vanderhoff and Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. shall not accept any new business or account transfers from any of the Charles Schwab & Co., Inc. clients whose names are contained on the list improperly prepared by Respondent Mari Vanderhoff unless such persons declare in writing that they have made a decision to move their business to Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. of their own volition and not as the result of solicitation by Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. or Respondent Mari Vanderhoff. Nothing in the injunction shall prevent Respondent Citigroup Global Markets, Inc. f/k/a

Salomon Smith Barney, Inc. from continuing to do business with anyone who was its customer as of the first date of the Arbitration hearing in this matter. Claimant shall provide Respondents Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc.'s and Mari Vanderhoff's counsel, within seven days of the date of this Award, the names necessary to allow those Respondents to implement this injunction. Any disputes as to whether the names so provided comply with the requirements of this Award shall be referred to the Panel Chair for binding resolution. Respondents shall not disclose the names so provided to anyone except (i) Respondent Mari Vanderhoff, (ii) Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc.'s Branch Manager at Respondent Mari Vanderhoff's place of employment, and (iii) any other Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. employee, not including any sales representative other than Respondent Mari Vanderhoff, who has a need to know the names in order to allow Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. to implement the injunction. Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. shall supervise all employees receiving the names to ensure that this information is not used for any purpose except compliance with the injunction. Upon expiration of the injunction, all copies of the list of names shall be destroyed by Respondents Mari Vanderhoff and Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. without making or keeping any copies.

Claimant may decline to provide these names to Respondents Mari Vanderhoff's and Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc.'s counsel if it so chooses. If Claimant does choose not to provide the names, however, all injunctive relief against all Respondents shall terminate effective April 30, 2004.

Nothing in this award shall be interpreted to limit the parties' ability to seek review of this award under the appropriate state or federal statute.

- II. Certain Claims Denied. Except as provided above, all of Claimant's other claims and requests for relief against all Respondents are denied and are hereby dismissed with prejudice.
- III. The parties shall bear their respective costs, including attorney's fees.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

| | |
|--------------------------|---------------|
| Initial claim filing fee | = \$ 500.00 |
| Injunctive Surcharge | = \$ 2,500.00 |

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 Charles Schwab & Co., 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> | = \$ 2,200.00 |
| Total Member Fees | = \$ 4,450.00 |

The member firm Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, 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> | = \$ 2,200.00 |
| Total Member Fees | = \$ 4,450.00 |

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 sessions with the Panel @ \$1,000.00/session | = \$ 2,000.00 |
| Pre-hearing conferences: | |
| November 7, 2003 | 1 session |
| February 27, 2004 | 1 session |

| | |
|--|-------------|
| One (1) Pre-hearing conference session with the Chairperson @ \$450.00/session | = \$ 450.00 |
| Pre-hearing conference: | |
| December 15, 2003 | 1 session |

| | |
|---|---------------|
| Seven (7) Hearing sessions @ \$1,000.00/session | = \$ 7,000.00 |
| Hearings: | |
| March 9, 2004 | 2 sessions |

| | |
|----------------|------------|
| March 10, 2004 | 2 sessions |
| March 11, 2004 | 2 sessions |
| March 12, 2004 | 1 session |

| | |
|-------------------------|----------------------|
| Total Forum Fees | = \$ 9,450.00 |
|-------------------------|----------------------|

1. The Panel assessed \$4,725.00 of the forum fees to Claimant
2. The Panel assessed \$4,725.00 of the forum fees jointly and severally to all Respondents except Respondent Bud Scott.

Fee Summary

1. Claimant, Charles Schwab & Co. Inc., is charged with the following fees and costs:

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|--|-----------------------|
| Initial Filing Fee | = \$ 500.00 |
| Injunctive Surcharge | = \$ 2,500.00 |
| Member Fees | = \$ 4,450.00 |
| <u>Forum Fees</u> | <u>= \$ 4,725.00</u> |
| Total Fees | = \$12,175.00 |
| <u>Less Payments</u> | <u>= \$(8,450.00)</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 3,725.00 |

2. Respondent, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., is charged with the following fees and costs:

| | |
|--|------------------------|
| Member Fees | = \$ 4,450.00 |
| <u>Less Payments</u> | <u>= \$ (4,450.00)</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 0.00 |

3. Respondents, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., Mari Vanderhoff, and Joyce Lynn Mills are charged jointly and severally with the following fees and costs:

| | |
|--|----------------------|
| Forum Fees | = \$ 4,725.00 |
| <u>Less Payments</u> | <u>= \$ (0.00)</u> |
| Balance Due NASD Dispute Resolution, Inc. | = \$ 4,725.00 |

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

NASD Dispute Resolution, Inc.
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ARBITRATION PANEL

| | | |
|--------------------------------|---|---|
| <i>Thomas J. Brewer, Esq.</i> | - | <i>Public Arbitrator, Presiding Chair</i> |
| <i>G. E. Craig Doupe, Esq.</i> | - | <i>Public Arbitrator</i> |
| <i>Robert Lewis Brown</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signature(s)


THOMAS J. BREWER, ESQ.
Chair, Public Arbitrator

April 9, 2004
Signature Date

G. E. CRAIG DOUPE, ESQ.
Public Arbitrator

Signature Date

ROBERT LEWIS BROWN
Non-Public Arbitrator

Signature Date

4/12/04
Date of Service

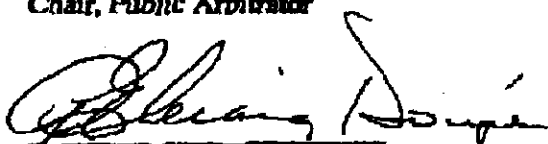
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| <i>G. E. Craig Doupe, Esq.</i> | - | <i>Public Arbitrator</i> |
| <i>Robert Lewis Brown</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signature(s)

THOMAS J. BREWER, ESQ.
Chair, Public Arbitrator

Signature Date



G. E. CRAIG DOUPE, ESQ.
Public Arbitrator

April 8, 2004

Signature Date

ROBERT LEWIS BROWN
Non-Public Arbitrator

Signature Date

4/12/04
Date of Service

NASD Dispute Resolution, Inc.
Arbitration No. 03-02141
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ARBITRATION PANEL

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| <i>G. E. Craig Doupe, Esq.</i> | - | <i>Public Arbitrator</i> |
| <i>Robert Lewis Brown</i> | - | <i>Non-Public Arbitrator</i> |

Concurring Arbitrators' Signature(s)

THOMAS J. BREWER, ESQ.
Chair, Public Arbitrator

Signature Date

G. E. CRAIG DOUPE, ESQ.
Public Arbitrator

Signature Date

Robert Lewis Brown
ROBERT LEWIS BROWN
Non-Public Arbitrator

April 7, 2004
Signature Date

4/12/04
Date of Service