

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

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In the Matter of the Arbitration Between:

Merrill, Lynch, Pierce, Fenner & Smith (Claimant) v. Richard G. Hausler and Smith Barney, a Division of Citigroup Global Markets, Inc. (Respondents)

Case Number: 03-02981

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimant Merrill Lynch, Pierce, Fenner & Smith ("Claimant"): Paul G. Kirk, Esq.,  
Rubin & Associates, Paoli, PA.

Respondent Richard G. Hausler ("Hausler"): Frank DeGrim, Esq., Luboja & Thau, LLP.,  
New York, NY.

Respondent Smith Barney, a division of Citigroup Global Markets, Inc. ("Citigroup"):  
Marcie S. Mintz, Esq., Citigroup, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: April 23, 2003.

Claimant signed the Uniform Submission Agreement: April 24, 2003.

Respondent Hausler did not file a Statement of Answer or sign the Uniform Submission Agreement.

Statement of Answer filed by Citigroup on or about: May 2, 2003.

Respondent Citigroup signed the Uniform Submission Agreement: May 2, 2003.

**CASE SUMMARY**

Claimant asserted the following causes of action: Hausler's breach of contract; Citigroup's wrongful interference with those contractual obligations; misappropriation and conversion; Hausler's breach of fiduciary duty; Citigroup's inducement of that breach of fiduciary duty; Respondents' interference with prospective and actual business relations; unfair competition; and unjust enrichment.

Unless specifically admitted in its Answer, Respondent Citigroup denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

**RELIEF REQUESTED**

Claimant requested:

1. A Permanent Injunction issue, enjoining Hausler, directly or indirectly, and all those acting in aid or concert with him, including Citigroup, from:
  - a. soliciting or otherwise initiating any further contact or communication with any client of Claimant whom Hausler served or whose name became known to Hausler while in the employ of Claimant for the purpose of advising said clients of Hausler's new affiliation or for the purpose of inviting, encouraging, or requesting the transfer of any accounts or business patronage from Claimant (excluding members of Hausler's family and relatives);
  - b. soliciting or initiating contact with any client whose records or information Hausler used in violation of paragraph 1 of his Agreement. This specifically includes any client whom Hausler may have contacted by mail, phone or otherwise through the use of any client phone numbers or other information obtained by Hausler while in the employ of Claimant (excluding members of Hausler's family and relatives); and
  - c. using disclosing, or transmitting, for any purpose, information contained in the records of Claimant or concerning its customers, including for purposes of soliciting business or account transfers from any customer formerly serviced by Hausler or whose information became known to him while in the employ of Claimant;
  - d. any and all other such acts as this Panel deems appropriate for injunctive relief.
2. Unspecified compensatory damages and other relief to be specified at the hearing.

Respondent Citigroup requested that the Statement of Claim be dismissed, and that it be awarded its fees and costs in this proceeding.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondent Hausler did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having appeared and testified at the hearing is bound by the determination of the Panel on all issues submitted.

In accordance with Rule 10335 of the NASD Code of Arbitration Procedure, hearings for the request for a permanent injunction were conducted on May 7 and 12, 2003. By letter

dated May 16, 2003 the parties were advised of the Panel's decisions as set forth in the Award section below.

In addition, the parties and Panel agreed that no additional hearings would be scheduled to address the merits of the case; the Panel ruled solely upon Claimant's application for a permanent injunction.

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. The Panel grants Claimant's request for a permanent injunction, as specified in Claimant's Statement of Claim, enjoining Hausler, directly or indirectly, and all those acting in aid or concert with him, including Citigroup, from:

- a. soliciting or otherwise initiating any further contact or communication with any client of Claimant whom Hausler served or whose name became known to Hausler while in the employ of Claimant for the purpose of advising said clients of Hausler's new affiliation or for the purpose of inviting, encouraging, or requesting the transfer of any accounts or business patronage from Claimant (excluding members of Hausler's family and relatives);
- b. soliciting or initiating contact with any client whose records or information Hausler used in violation of paragraph 1 of his Agreement. This specifically includes any client whom Hausler may have contacted by mail, phone or otherwise through the use of any client phone numbers or other information obtained by Hausler while in the employ of Claimant (excluding members of Hausler's family and relatives); and
- c. using disclosing, or transmitting, for any purpose, information contained in the records of Claimant or concerning its customers, including for purposes of soliciting business or account transfers from any customer formerly serviced by Hausler or whose information became known to him while in the employ of Claimant.

2. The permanent injunction will expire on October 31, 2003.

3. The parties are prohibited from seeking an extension of the court's order.
4. The parties are directed to jointly move the court to modify or dissolve the court order. The parties shall file this motion within ten (10) days from the date of the May 16, 2003 notice.
5. As noted in the "Other Issues Considered and Decided" section above, the Panel ruled solely upon the application for a permanent injunction.

### **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	= \$ 500.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Merrill, Lynch, Pierce, Fenner & Smith and Smith Barney, a division of Citigroup Global Markets, Inc. are a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

1. Member firm Merrill Lynch, Pierce, Fenner & Smith is assessed:

Injunctive relief surcharge	= \$2,500.00
Additional arbitrator honoraria	= \$ 283.34

2. Member firm Smith Barney, a division of Citigroup Global Markets is assessed:

Additional arbitrator honoraria	= \$ 283.34
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3. Associated person Richard Hausler is assessed:

Additional arbitrator honoraria = \$ 283.34

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) Hearing sessions @ \$1,000.00 = \$3,000.00

Hearing Dates: May 7, 2003 2 sessions

May 12, 2003 1 session

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Total Forum Fees = \$3,000.00

1. The Panel has assessed \$1,000.00 of the forum fees against Claimant Merrill Lynch, Pierce, Fenner & Smith.
2. The Panel has assessed \$1,000.00 of the forum fees against Respondent Citigroup.
3. The Panel has assessed \$1,000.00 of the forum fees against Respondent Hausler.

**Fee Summary**

1. Claimant Merrill Lynch, Pierce, Fenner & Smith is solely liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$4,450.00
Injunctive Relief Fees	= \$2,500.00
Additional Arbitrator Honoraria	= \$ 283.34
Forum Fees	= \$1,000.00
Total Fees	= \$8,733.34
<u>Less payments</u>	= \$6,250.00
Balance Due NASD Dispute Resolution	= \$2,483.34

2. Respondent Citigroup is solely liable for:

Member Fees	= \$4,450.00
Additional Arbitrator Honoraria	= \$ 283.84
Forum Fees	= \$1,000.00
Total Fees	= \$5,733.34
<u>Less payments</u>	= \$4,450.00
Balance Due NASD Dispute Resolution	= \$1,283.34

3. Respondents Hausler is solely liable for:

Additional Arbitrator Honoraria	= \$ 283.34
<u>Forum Fee</u>	= \$1,000.00
Total Fees	= \$1,283.34

<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$1,283.34

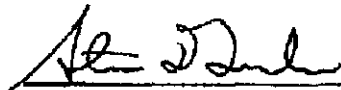
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Steven D. Leader	-	Public Arbitrator, Presiding Chair
Diane Ciccone, Esq.	-	Public Arbitrator
Dominick J. Dorata, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument in which is my award.

  
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Steven D. Leader  
Public Arbitrator, Presiding Chairperson

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

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Diane Ciccone, Esq.  
Public Arbitrator

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Signature Date

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Dominick J. Dorata, Esq.  
Non-Public Arbitrator

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Signature Date

June 9, 2003  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

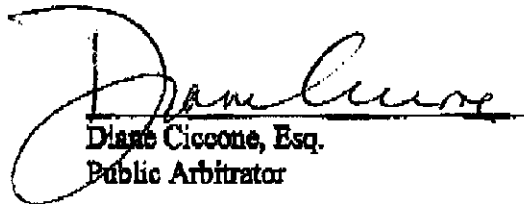
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