

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Nathan Mark Shilberg, Claimant v. Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. and James H. Barnes, Respondents

Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. and James H. Barnes, Third-Party Claimants v. Sidney and Pearl Shilberg, Third-Party Respondents

Case Number: 03-03455

Hearing Site: San Diego, California

Nature of the Disputes: Customer v. Member and Associated Person
Member and Associated Person v. Customers

REPRESENTATION OF PARTIES

For Claimant Nathan Mark Shilberg:

Philip W. Boesch, Jr., Esq.
The Boesch Law Group
Marina del Rey, California

For Respondents/Third-Party Claimants
Citigroup Global Markets, Inc. f/k/a
Salomon Smith Barney, Inc. and James H. Barnes
(hereinafter "Respondents"):

Michael Gless, Esq.
David D. Piper, Esq.
Keesal, Young & Logan
Long Beach, California

For Third-Party Respondents Sidney and Pearl
Shilberg:

Erwin J. Shustak, Esq.
Shustak, Jalil & Heller
San Diego, California

CASE INFORMATION

Amended Statement of Claim filed: May 9, 2003

Claimant's Uniform Submission Agreement signed: June 6, 2003

Joint Statement of Answer to Amended Statement of Claim and Third-Party Claim Against Sidney and Pearl Shilberg filed by Respondents Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. and James H. Barnes: July 21, 2003

Joint Statement of Answer to Third-Party Claim filed by Third-Party Respondents Sidney and Pearl Shilberg: November 21, 2003

Joint Amended Statement of Answer filed by Third-Party Respondents Sidney and Pearl Shilberg: November 4, 2004

Respondent James H. Barnes' Uniform Submission Agreement signed: June 5, 2003

Third-Party Respondents' Joint Uniform Submission Agreement signed: June 16, 2005

CASE SUMMARY

Claimant alleged conversion, fraud, intentional interference with prospective advantage, breach of fiduciary duty, breach of confidential relationship, breach of implied covenant of good faith and fair dealing, breach of contract, unjust enrichment, negligence and/or negligent misrepresentation, intentional infliction of emotional distress, negligent interference with prospective economic advantage, violation of 15 U.S.C. §80a-33(b) (or Investment Company Act), violation of 15 U.S.C. §78(j) and §77(g), violation of 11 U.S.C. §362(a)(3), and turnover pursuant to 11 U.S.C. §363. The dispute involved alleged forgery of documents and the purchase and/or sale of unspecified securities.

In their Statement of Answer, Respondents denied the allegations made in the Amended Statement of Claim and asserted affirmative defenses.

In their Third-Party Claim, Respondents alleged that Third-Party Respondents should indemnify Respondents.

In their Statement of Answer to the Third-Party Claim, Third-Party Respondents denied the allegations made in the Third-Party Claim and asserted affirmative defenses.

RELIEF REQUESTED

Claimant requested compensatory damages in excess of \$2,000,000.00, punitive damages in the amount of \$10,000,000.00, injunctive relief, and costs. In addition, Claimant requested "...that a constructive trust on Claimant's behalf should be imposed on all sums received by Respondent SSB as a result of the aforementioned conduct. Further, the Arbitrators should order the conveyance of the determined constructive trust interest, or its money equivalent, by Respondents to Nathan, as a turnover and unjust enrichment remedy. The Arbitrators also should order a full accounting, at Respondent's expense, of all sums received by Respondent SSB."

In their Statement of Answer and Third-Party Claim, Respondents requested dismissal of the Claimant's Statement of Claim in its entirety, indemnification and contribution, that Claimant be sanctioned for filing a frivolous claim, attorney's fees, and costs.

In their Statement of Answer to the Third-Party Claim, Third-Party Respondents requested dismissal of Respondents' Third-Party Claim in its entirety.

OTHER ISSUES CONSIDERED AND DECIDED

On February 11, 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.

On June 20, 2003, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 30, 2004, the Arbitration Panel granted Third-Party Respondents' Request to File an Amended Statement of Answer but denied Third-Party Respondents' Request to File a Counterclaim.

On June 14, 2005, Third-Party Respondents and Third-Party Respondents' 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.

Respondent Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. 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 answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

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, and evidence presented at the hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Respondent Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. is liable to and shall pay Claimant Nathan Mark Shilberg \$721,119.00 in compensatory damages for negligence resulting from Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc.'s failure to supervise.
- 2) Respondent Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. is liable to and shall pay Claimant Nathan Mark Shilberg interest on the sum of \$721,119.00 at the rate of 6% per annum from May 9, 2003 through June 10, 2005.
- 3) Respondent Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. is liable to and shall pay Claimant Nathan Mark Shilberg \$70,000.00 in attorney's fees, pursuant to Marshall & Company Inc. vs. Duke 114 Fed 3rd 188, 11th Circ 1997 and U.S. Offshore Inc. vs. Seabulk, 753 Fed. Supp. 86,92 SDNY 1990.
- 4) Claimant's request for punitive damages is denied.
- 5) Third-Party Respondents Sidney and Pearl Shilberg are jointly and severally liable to and shall pay Respondent Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. \$360,560.00 in compensatory damages.
- 6) Third-Party Respondents Sidney and Pearl Shilberg are jointly and severally liable to and shall pay Respondent Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. interest on the sum of \$360,560.00 at the rate of 6% per annum from May 9, 2003 through June 10, 2005.
- 7) Third-Party Respondents Sidney and Pearl Shilberg are jointly and severally liable to and shall pay Respondent Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. \$35,000.00 in attorney's fees, pursuant to Marshall & Company Inc. vs. Duke 114 Fed 3rd 188, 11th Circ 1997 and U.S. Offshore Inc. vs. Seabulk, 753 Fed. Supp. 86,92 SDNY 1990.
- 8) Respondent James H. Barnes is dismissed with prejudice.
- 9) Respondent James H. Barnes' request for expungement is denied.

10) Except as awarded above, the parties shall bear their respective costs, including attorney's fees.

11) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the *Code of Arbitration Procedure* ("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	= \$ 600.00
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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 that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 3,750.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 5,500.00
Total Member Fees	= \$10,000.00

Adjournment Fees

The following adjournment fees are assessed:

June 14 – 18, 2004 adjournment requested by Claimant and Respondents	= \$ 1,200.00
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November 8 – 9, 2004 and November 22 – 24, 2004 adjournment requested by Third-Party Respondents	= \$ 1,200.00
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January 24 – 31, 2005 adjournment requested by Claimant	= \$ 1,200.00
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1. The Panel assessed \$1,200.00 of the adjournment fees jointly and severally to Third-Party Respondents Sidney and Pearl Shilberg for the June 2004 adjournment.
2. The Panel waived the \$1,200.00 adjournment fee for the November 2004 adjournment.

3. The Panel assessed \$1,200.00 of the adjournment fee to Claimant Nathan Mark Shilberg for the January 2005 adjournment.

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:

Eight (8) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 9,600.00

Pre-hearing conferences:	December 23, 2003	1 session
	January 20, 2004	1 session
	February 20, 2004	1 session
	May 26, 2004	1 session
	June 16, 2004	1 session
	October 28, 2004	1 session
	December 16, 2004	1 session
	January 26, 2005	1 session

Eight (8) Hearing sessions @ \$1,200.00/session = \$ 9,600.00

Hearings:	June 6, 2005	2 sessions
	June 7, 2005	2 sessions
	June 8, 2005	2 sessions
	June 9, 2005	2 sessions

Total Forum Fees = **\$19,200.00**

1. The Panel waived the \$1,200.00 forum fee for the December 23, 2003 pre-hearing conference.
2. The Panel assessed \$6,000.00 of the forum fees to Claimant Nathan Mark Shilberg.
3. The Panel assessed \$6,000.00 of the forum fees to Respondent Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc.
4. The Panel assessed \$6,000.00 of the forum fees to Third-Party Respondents Sidney and Pearl Shilberg.

Fee Summary

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

Initial Filing Fee	= \$ 600.00
Adjournment Fee	= \$ 1,200.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$ 7,800.00
Less payments	= \$(1,800.00)
Balance Due NASD Dispute Resolution	= \$ 6,000.00

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

Member Fees	= \$ 10,000.00
Forum Fees	= \$ 6,000.00
Total Fees	= \$ 16,000.00
Less payments	= \$(12,450.00)
Balance Due NASD Dispute Resolution	= \$ 3,550.00

3. Respondents are charged jointly and severally with the following fees and costs:

Third-Party Claim Filing Fee	= \$ 5,000.00
Less payments by Salomon Smith Barney, Inc. n/k/a Citigroup Global Markets, Inc.	= \$(5,000.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Third-Party Respondents are charged jointly and severally with the following fees and costs:

Forum Fees	= \$ 6,000.00
Adjournment Fee	= \$ 1,200.00
Total Fees	= \$ 7,200.00
Less payments	= \$(1,250.00)
Balance Due NASD Dispute Resolution	= \$ 5,950.00

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.

ARBITRATION PANEL

Judith A. Gust

Public Arbitrator, Presiding Chair

William R. Newsome

Public Arbitrator

Harrison Lee

Non-Public Arbitrator

Concurring Arbitrators' Signatures

Judith A. Gust

Judith A. Gust
Chair, Public Arbitrator

6/17/05

Signature Date

William R. Newsome
Public Arbitrator

Signature Date

Harrison Lee
Non-Public Arbitrator

Signature Date

6/20/05

Date of Service

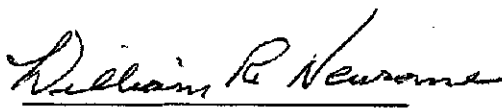
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Judith A. Gust	-	Public Arbitrator, Presiding Chair
William R. Newsome	-	Public Arbitrator
Harrison Lee	-	Non-Public Arbitrator

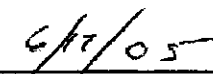
Concurring Arbitrators' Signatures

Judith A. Gust
Chair, Public Arbitrator

Signature Date



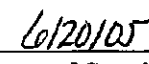
William R. Newsome
Public Arbitrator



Signature Date

Harrison Lee
Non-Public Arbitrator

Signature Date



Date of Service

ARBITRATION PANEL

Judith A. Gust	-	Public Arbitrator, Presiding Chair
William R. Newsome	-	Public Arbitrator
Harrison Lee	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Judith A. Gust
Chair, Public Arbitrator

Signature Date

William R. Newsome
Public Arbitrator

Signature Date

Harrison Lee
Harrison Lee
Non-Public Arbitrator

6-17-2005
Signature Date

6/20/05
Date of Service