

**Stipulated Award  
NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

I. Joseph Berger (Claimant) v. Joseph Shagrin, Jr. and Salomon Smith Barney Inc. (n/k/a Citigroup Global Markets Inc.) (Respondents)

Case Number: 03-03652

Hearing Site: Cleveland, Ohio

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Nature of the Dispute: Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Claimant I. Joseph Berger, hereinafter referred to as "Claimant": Represented by Roger W. Van Deusen, Esq., Van Deusen & Wagner, LLC, Cleveland, Ohio.

Respondents Joseph Shagrin, Jr. and Salomon Smith Barney, Inc. (n/k/a Citigroup Global Markets Inc.) ("Smith Barney"), collectively hereinafter referred to as "Respondents": Represented by H. Nicholas Berberian, Esq. and August J. Schupp, Esq. Neal, Gerber & Eisenberg LLP, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: May 16, 2003

Claimant signed Uniform Submission Agreements on or about: May 7, 2003

Statement of Answer filed by Respondents on or about: August 1, 2003

Smith Barney signed the Uniform Submission Agreement on or about: July 29, 2003

Joseph Shagrin, Jr. signed the Uniform Submission Agreement on or about: August 7, 2003

**CASE SUMMARY**

Claimant asserted the following causes of action: Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. § 78j(b) and SEC Rule 10b-5, Breach of Fiduciary Duty, Common Law Fraud, Gross Negligence, Negligence, Breach of Contract and Misrepresentation. Claimant's claims involved unspecified telecom, technology and other sector stocks.

Unless specifically admitted in its Answer, Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: Failure to State a Claim, Absence of Proximate Causation, Statutes of Limitation, Failure to Mitigate, Legal and Equitable Estoppel, Waiver and Unavailability of Attorneys' Fees and/or Punitive Damages.

**RELIEF REQUESTED**

Claimant requested:

Out-of-pocket losses	\$99,133.62
Excessive Commission Charges	no specified amount
Loss of Use of Funds	no specified amount
Exemplary and/or Punitive Damages	\$100,000.00
Attorney's Fees	no specified amount
Other Costs	no specified amount

Respondents requested dismissal of the Statement of Claim in its entirety and their costs of this action, including reasonable attorneys' fees and costs.

**OTHER ISSUES CONSIDERED AND DECIDED**

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**

In full and final resolution of the issues submitted for determination, the Panel orders as follows:

1. Any and all claims asserted in this matter against individual Respondent Joseph Shagrin, Jr. have been withdrawn by Claimant and are hereby dismissed with prejudice. Accordingly, Respondent Joseph Shagrin, Jr. has requested the expungement of all references to this arbitration from his registration records maintained by the NASD Central Registration Depository ("CRD").
2. The Panel recommends the expungement of all reference to the above-captioned arbitration from Respondent Joseph Shagrin, Jr.'s records maintained by the CRD, with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Joseph Shagrin, Jr. must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. All claims against Smith Barney are hereby dismissed with prejudice pursuant to a settlement reached between the parties.
3. Any and all relief not specifically addressed is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$ 300.00
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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 firm that employed the associated person(s) at the time of the events giving rise to the dispute. In this matter, the member firm Salomon Smith Barney, Inc. is a party.

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

#### **Forum Fees and Assessments**

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

(1) Pre-hearing conference session with Panel @ \$1,125	= \$ 1,125.00
Pre-hearing conference: December 22, 2003 1 session	

Total Forum Fees	= \$ 1,125.00
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1. The Panel has assessed \$562.50 of the forum fees against Claimant.
2. The Panel has assessed \$562.50 of the forum fees jointly and severally against Respondents.

### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 562.50</u>
Total Fees	= \$ 862.50
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Refund Due Claimant	= \$ 562.50

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2. Respondent Smith Barney is solely liable for:

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

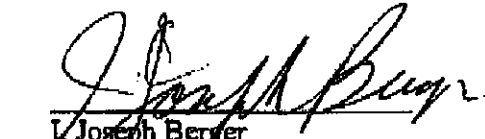
3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 562.50
Total Fees	= \$ 562.50
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution, Inc.	= \$ 562.00

All balances are due and payable to NASD Dispute Resolution, Inc.

NASD Dispute Resolution, Inc.  
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Award Page 5 of 6

**Parties' Signatures**

  
I. Joseph Berger  
Claimant

  
Signature Date

Salomon Smith Barney, Inc.  
(n/k/a Citigroup Global Markets, Inc.)  
Respondent

Signature Date

Joseph Shagrin, Jr.  
Respondent


Signature Date

NASD Dispute Resolution, Inc.  
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Respondent

9/21/04  
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Signature Date

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**ARBITRATION PANEL**

Benjamin B. Segal, Esq.  
Joseph Edelstein  
Howard A. Buchler

Public Arbitrator, Presiding Chair  
Public Arbitrator  
Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Benjamin B. Segal, Esq.  
Public Arbitrator, Presiding Chair

9/27/04  
Signature Date

Joseph Edelstein  
Public Arbitrator

Signature Date

Howard A. Buchler  
Non-Public Arbitrator

Signature Date

October 7, 2004  
Date of Service (For NASD office use only)

NASD Dispute Resolution, Inc.  
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Joseph Edelstein	-	Public Arbitrator
Howard A. Buchler	-	Non-Public Arbitrator

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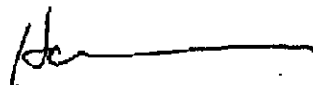
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