

IN THE MATTER OF THE
ARBITRATION BETWEEN:

Claimant,

y.

CITIGROUP GLOBAL MARKETS, INC.,
THOMAS SIMMS RALEY
and PHILLIP MARKS.

~~~~~

CASE NO. 03-03908  
DALLAS, TEXAS

### Customer v. Member Firm and Associated Person.

Claimant Elaina A. Kung was represented by Rachel Hranitzky, Esq., of Chamblee & Ryan, P.C., in Dallas, Texas.

Respondents Citigroup Global Markets, Inc. ("CGMI") and Thomas Simms Raley ("Raley") were represented by Thomas D. Cordell, Haynes and Boone, LLP, Houston, Texas. Respondent Phillip Marks initially appeared pro se but was subsequently represented by Thomas D. Cordell.

The Statement of Claim was filed on or about June 5, 2003.  
Claimants' Submission Agreement was filed on or about July 24, 2003.

The Statement of Answer and Uniform Submission Agreement were filed by Respondent Phillip Marks on or about July 25, 2003.

The Joint Statement of Answer was filed by Respondents CGMI and Raley on or about August 7, 2003.

The Submission Agreement of Respondent CGMI was filed on or about September 10, 2003.

The Submission Agreement of Respondent Raley filed on or about September 22, 2003.

### **CASE SUMMARY**

Claimant asserted the following causes of action: fraud, breach of fiduciary duty, negligence, breach of contract, unauthorized transactions, unsuitable transactions, failure to execute and failure to supervise. The claims arose from the purchase of various securities in Claimant's account.

Unless specifically admitted in their Answer, Respondents, denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: Claimant's account had an aggressive risk tolerance, permitted speculation and had a primary investment objective of growth. All investments in the account were consistent with Claimant's risk parameters and investment objectives and were therefore suitable. Claimant, along with other family members, made the decision to invest in an all equity aggressive portfolio given her age, investment horizon and risk tolerance. At all pertinent times, Claimant's account was invested consistent with Guided Portfolio Management guidelines. No misrepresentations of any kind were made to Claimant. Claimant received timely documentation from Respondents that properly reflected the activity, value and worth of her account, as well as the risk rating of the stocks held in the account. Any losses in Claimant's account were the result of market conditions and the historic market collapse and not any wrongdoing by Respondents. Respondents did not breach any duty owed to Claimant, and Respondents were not negligent.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

|                             |             |
|-----------------------------|-------------|
| Actual/Compensatory Damages | \$123,000   |
| Punitive Damages            | \$246,000   |
| Interest                    | Unspecified |
| Attorneys' fees             | Unspecified |
| Other Costs                 | Unspecified |
| Other monetary Relief       | Unspecified |

Respondents requested that the claims asserted against them be denied and dismissed in their entirety.

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

Claimant non-suited Thomas Raley and Phillip Marks prior to any hearing. Claimants have informed NASD Dispute Resolution that the remaining claims have been fully settled, resolved and compromised. The Claimant, CGMI and Raley have requested that the undersigned arbitrators enter a Stipulated Award expunging any references to this case and claim from the NASD Central Registration Depository ("CRD") record of Thomas Simms Raley. This case was filed prior to April 12, 2004 and is thus not subject to Rule 2130.

The parties have agreed that the Stipulated Award in this matter may be executed in counterpart copies or that a handwritten, signed Stipulated Award may be entered. In either case, the parties have agreed to receive conformed copies of the Stipulated Award while the originals remain on file with the NASD Dispute Resolution ("NASD").

## **STIPULATED AWARD**

After considering the parties' submissions and representations, but without making any findings of fact or conclusions of law, the undersigned arbitrator orders as follows:

1. All claims against Respondents Citigroup Global Markets, Inc., Thomas Simms Raley and Phillip Marks are hereby dismissed with prejudice;
2. The Panel recommends the expungement of all references to the above-captioned arbitration from Respondent Thomas Simms Raley's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent Thomas Simms Raley must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. All parties shall bear their respective costs, including attorneys' fees; and
4. Any and all relief not specifically addressed herein, including attorneys' fees and costs, is dismissed with prejudice.

### **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 | = \$ 300.00 |
|--------------------------|-------------|

#### **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 persons at the time of the events giving rise to the dispute. Accordingly, Citigroup Global Markets, Inc. is a party and the following member fees are assessed:

|                         |               |
|-------------------------|---------------|
| Member surcharge        | = \$ 1,700.00 |
| Pre-hearing process fee | = \$ 750.00   |
| Hearing process fee     | = \$ 2,750.00 |

#### **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: May 14, 2004 1 session                  |               |
| One (1) Pre-hearing session with Panel @ \$1,125.00             | = \$ 1,125.00 |
| Pre-hearing conference: December 15, 2003 1 session             |               |
| Total Forum Fees                                                | = \$ 1,525.00 |

The Panel has assessed \$787.50 of the forum fees to Claimant Elaina A. Kung and has assessed \$787.50 of the forum fees jointly and severally to Respondents Citigroup Global Markets, Inc., Thomas Simms Raley and Phillip Marks.

12/30/2004 11:08 FAX

NASD

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**FEE SUMMARY**

Claimant Elaina A. Kung is solely liable for:

|                                             |               |
|---------------------------------------------|---------------|
| Initial Filing Fee                          | = \$ 300.00   |
| <u>Forum Fees</u>                           | = \$ 787.50   |
| Total Fees                                  | = \$ 1,087.50 |
| <u>Less payments</u>                        | = \$ 1,425.00 |
| Balance Refunded by NASD Dispute Resolution | = \$ 337.50   |

Respondent Citigroup Global Markets, Inc. is solely liable for:

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

Respondents Citigroup Global Markets, Inc., Thomas Simms Raley and Phillip Marks are jointly and severally liable for:

|                                     |             |
|-------------------------------------|-------------|
| Forum Fees                          | = \$ 787.50 |
| <u>Less payments</u>                | = \$ 0.00   |
| Balance Due NASD Dispute Resolution | = \$ 787.50 |

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

**ARBITRATORS**

Ann Blaess Kimball – Public Arbitrator, Presiding Chairperson

Phillip Lee Scheldt, Ph.D. – Non-Public Arbitrator

James M. Tipton, Ph.D. – Public Arbitrator

**ARBITRATOR'S SIGNATURES:**

Ann Blaess Kimball  
Ann Blaess Kimball, Esq.  
Public Arbitrator  
Presiding Chairperson

December 31, 2004  
Date

\_\_\_\_\_  
Phillip Lee Scheldt, Ph.D.  
Non-Public Arbitrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
James M. Tipton, Ph.D.  
Public Arbitrator

\_\_\_\_\_  
Date

Date of Service of Award (NASD Use Only): 1/5/05 JLM

**FEE SUMMARY**

Claimant Elaine A. Kung is solely liable for:

|                                             |               |
|---------------------------------------------|---------------|
| Initial Filing Fee                          | = \$ 300.00   |
| Forum Fees                                  | = \$ 787.50   |
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|                                     |             |
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 Ann Blaess Kimball, Esq.  
 Public Arbitrator  
 Presiding Chairperson

Date

  
 \_\_\_\_\_  
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 Non-Public Arbitrator

Date

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Date

Date of Service of Award (NASD Use Only): 1/5/05 Nam

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 James M. Tipton, Ph.D. – Public Arbitrator


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 Ann Blaess Kimball, Esq.  
 Public Arbitrator  
 Presiding Chairperson

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Phillip Lee Scheldt, Ph.D.  
 Non-Public Arbitrator

\_\_\_\_\_  
 Date

  
 James M. Tipton, Ph.D.  
 Public Arbitrator

12/30/04  
 Date

Date of Service of Award (NASD Use Only):

1/5/05 Mm