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

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In the Matter of the Arbitration Between:

Names of the Claimants

James R. Schaub  
Alice M. Schaub

Case Number: 03-04551

Names of the Respondents

Salomon Smith Barney  
Donald E. Domingue

Hearing Site: New Orleans, Louisiana

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

**REPRESENTATION OF PARTIES**

For James R. Schaub and Alice M. Schaub, hereinafter collectively referred to as "Claimants": Stephen C. Carleton, Esq. and Barbara Messina, Esq., Simoneaux Carleton Dunlap & Olinde, LLC, Baton Rouge, Louisiana.

For Respondent Salomon Smith Barney ("SSB"): Etta M. Gumbs, Esq., Sr. Vice President, Associate General Counsel, Citigroup Global Markets, Inc., New York, New York.

For Respondent Donald E. Domingue ("Domingue"): Robert L. Broussard, Durio, McGoffin, Stagg & Ackermann, Lafayette, Louisiana.

**CASE INFORMATION**

Statement of Claim filed on or about: June 18, 2003.

Claimants signed the Uniform Submission Agreements: June 11, 2003.

Statement of Answer filed by Respondents on or about: August 29, 2003.

Respondents did not file executed Uniform Submission Agreements.

Amended Statement of Claim filed by Claimants on or about: November 18, 2003.

Peremptory Exception of Prescription filed by Respondent Domingue on or about: July 29, 2004.

Memorandum in Opposition to Respondent Domingue's Peremptory Exception of Prescription filed by Claimants on or about: August 2, 2004.

Respondent Domingue's Motion to Strike Punitive Damages Claim asserted in Claimants' Supplemental Memorandum of Law filed on or about: August 3, 2004.

Claimants' Response to Motion to Strike Claimants' Punitive Damages Claim filed on or about: August 3, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action against Respondents: breach of contract; breach of fiduciary duty; negligent and/or intentional misrepresentation; fraudulent and/or deceitful practices; unsuitability; violations of La. R.S. 51:712 A (2) and D of the Louisiana Revised Statutes of 1950; and violations of the Securities and Exchange Act of 1934, specifically, but not limited to 15 U.S.C.A. Section 771. Claimants further asserted the cause of action of failure to follow instructions against Respondent Domingue. The causes of action relate to the purchase in Claimants' account of the Manulife Venture Annuity.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted various defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$44,000.00, interest at the rate of 6% per annum from November 1999, reasonable attorneys' fees, costs of this arbitration, and any other general, specific or equitable relief to which they are entitled.

Respondents requested that the Statement of Claim be denied in its entirety.

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

Respondent SSB did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, having answered the claim, is bound by the determination of the undersigned arbitrator (the "Arbitrator") on all issues submitted.

Respondent Domingue did not file with NASD Dispute Resolution a properly executed submission to arbitration 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 Arbitrator on all issues submitted.

On or about July 21, 2004, Claimants filed a notice of settlement with respect to Respondent SSB, but stated their desire to proceed to arbitration against Respondent Domingue.

Respondent Domingue filed a *Peremptory Exception of Prescription*, which asserted that Claimants' claims should be dismissed based upon the applicable statute of limitations in the state of Louisiana. In their response, Claimants asserted, among other things, that Respondent Domingue's motion has no basis in fact or law. At the evidentiary hearing, the Arbitrator deferred ruling on the motion until after all evidence was presented, at which time the Arbitrator deemed this motion moot.

At the evidentiary hearing, the Arbitrator deferred ruling on Respondent Domingue's Motion to Strike Claimants' punitive damage claim until after all evidence was presented, at which time the Arbitrator deemed this motion moot.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

Assuming that the product was unsuitable for Claimants, it is clear that Claimants had sufficient signals to put them on notice regarding their claims as early as September 2000, but they failed to mitigate their damages by (a) making complaints at that time and (b) moving their money out of the "market" investment into a money market. Also, Claimants' inaction could be perceived as their ratification of the purchase of the seven-year annuity product.

For a number of reasons, not all of which are addressed herein, Claimants' claims are denied in their entirety.

Each party shall bear their own costs.

Any and all claims for relief not specifically addressed herein, including Claimants' request for attorneys' fees, are denied.

### **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	= \$ 175.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent SSB is a member firm and a party.

Member Surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,625.00

#### **Adjournment Fees**

No adjournment fees were assessed in this matter.

#### **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

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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 Arbitrator.

Injunctive relief fees were not assessed in this matter.

**Forum Fees and Assessments**

The Arbitrator 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 @ \$450.00/session			= \$ 450.00
Pre-hearing conference:	March 2, 2004	1 session	
Three (3) Hearing sessions @ \$450.00/session			= \$1,350.00
Hearing Date:	August 4, 2004	3 sessions	
<hr/> Total Forum Fees			= \$1,800.00

The Arbitrator has assessed forum fees of \$900.00 to Claimants, jointly and severally.

The Arbitrator has assessed forum fees of \$900.00 to Respondent Domingue.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 900.00
Total Fees	= \$1,075.00
Less Payments	= \$1,075.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent SSB is solely liable for:

Member Fees	= \$2,625.00
Total Fees	= \$2,625.00
Less Payments	= \$2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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Respondent Domingue is solely liable for:

<u>Forum Fees</u>	= \$ 900.00
<u>Total Fees</u>	= \$ 900.00
<u>Less Payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 900.00

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

**ARBITRATOR**

Ashley L. Belleau, Esq.

Public Arbitrator

**Arbitrator's Signature**

/s/

Ashley L. Belleau, Esq.  
Public Arbitrator

August 17, 2004  
Signature Date

August 18, 2004

Date of Service (For NASD Dispute Resolution office use only)

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Respondent Domingue is solely liable for:

<u>Forum Fees</u>	= \$ 900.00
<u>Total Fees</u>	= \$ 900.00
<u>Less Payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 900.00

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

**ARBITRATOR**

Ashley L. Belleau, Esq.

Public Arbitrator

**Arbitrator's Signature**Ashley L. Belleau, Esq.  
Public Arbitrator8-17-04

Signature Date

Date of Service (For NASD Dispute Resolution office use only)