

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

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In the Matter of the Arbitration Between:

Reva Ostrow (Claimant) v. Merrill Lynch, Pierce, Fenner & Smith, Inc., Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., and Sandy Toochin (Respondents)

Case Number: 03-05313

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Reva Ostrow ("Ostrow") hereinafter referred to as "Claimant": Theodore G. Eppenstein, Esq., Eppenstein & Eppenstein, New York, NY.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") and Sandy Toochin ("Toochin"): Timothy P. Burke, Esq., Bingham McCutchen, LLP, Boston, MA.

Respondents Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. ("Citigroup") and Sandy Toochin ("Toochin"): Sean J. Coughlin, Esq., Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., New York, NY.

Merrill Lynch, Citigroup, and Toochin are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: July 21, 2003.

Claimant signed the Uniform Submission Agreement: July 11, 2003.

Joint Statement of Answer filed by Respondents Merrill Lynch and Toochin on or about: October 3, 2003.

Joint Statement of Answer filed by Respondents Citigroup and Toochin on or about: October 2, 2003.

Respondent Merrill Lynch signed the Uniform Submission Agreement: August 28, 2003.

Respondent Toochin signed the Uniform Submission Agreement: November 3, 2003.

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

### **CASE SUMMARY**

Claimant asserted the following causes of action: unsuitability; breach of fiduciary duty; misrepresentations and omissions; negligence and gross negligence, and negligent misrepresentation; fraud; breach of contract and breach of the covenant of good faith and fair dealing; breach of warranty; respondeat superior; and violation of New York General Business Law Section 349(a). The causes of action relate to various common stocks.

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

### **RELIEF REQUESTED**

Claimant requested unspecified compensatory, and/or rescissionary, and/or benefit of the bargain damages; exemplary damages; disgorgement of Respondents' compensation; forum fees and administrative fees; reasonable attorneys' fees; costs; expert witness fees and other witness fees; forum and administrative expenses; all other costs; interest; and such other and further relief as may appear just and equitable.

Respondents Merrill Lynch and Tootchin requested that the Panel dismiss the Statement of Claim in its entirety; that the Panel direct that the registration file of Respondent Tootchin be expunged of any reference to this claim; and such other, further, and different relief as the Panel deems appropriate.

Respondents Citigroup and Tootchin requested that Claimant's Statement of Claim be dismissed with prejudice with the costs associated with the arbitration assessed against the Claimant.

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

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

1. Respondent Merrill Lynch is solely liable for and shall pay to Claimant compensatory damages in the amount of \$105,300.00.
2. Respondent Citigroup is solely liable for and shall pay to Claimant compensatory damages in the amount of \$90,000.
3. Respondent Tootchin is solely liable for and shall pay to Claimant compensatory damages in the amount of \$21,700.00.

4. Any and all relief not specifically addressed herein, including attorneys fees and punitive damages, is 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 = \$ 250.00

#### **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 person at the time of the events giving rise to the dispute. Accordingly, Merrill Lynch, Pierce, Fenner & Smith, Inc. and Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. are parties.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,200.00

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

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, 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 conferences: April 7, 2005 1 session

One (1) Pre-hearing session with Panel @ \$1,000.00 = \$ 1,000.00

Pre-hearing conference: July 26, 2004 1 session

Twenty (20) Hearing sessions @ \$1,000.00 = \$20,000.00

Hearing Dates: June 2, 2005 2 sessions  
June 3, 2005 2 sessions  
June 8, 2005 2 sessions  
June 9, 2005 2 sessions  
June 10, 2005 2 sessions  
June 15, 2005 2 sessions  
June 16, 2005 2 sessions  
June 17, 2005 2 sessions  
June 27, 2005 2 Sessions  
July 8, 2005 2 Sessions

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Total Forum Fees = \$21,450.00

1. The Panel has assessed \$10,725.00 of the forum fees against Claimant.
2. The Panel has assessed \$5,262.50 of the forum fees against Respondent Merrill Lynch.
3. The Panel has assessed \$5,262.50 of the forum fees against Respondent Citigroup.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 250.00
Forum Fees	= \$ 10,725.00
Total Fees	= \$ 10,975.00
Less payments	= \$ 1,250.00
Balance Due NASD Dispute Resolution	= \$ 9,725.00

2. Respondent Merrill Lynch is solely liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 5,262.50
Total Fees	= \$ 9,712.50
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 5,262.50

3. Respondent Citigroup is solely liable for:

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 5262.50
Total Fees	= \$ 9,712.50
Less payments	= \$ 4,500.00
Balance Due NASD Dispute Resolution	= \$ 5,212.50


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

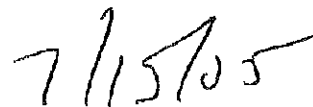
**ARBITRATION PANEL**

Mitchell S. Friedman, Esq.	-	Public Arbitrator, Presiding Chairperson
Zarin P. Bengali, Esq.	-	Public Arbitrator
David W. Haynes	-	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 which is my award.

  
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Mitchell S. Friedman, Esq.  
Public Arbitrator, Presiding Chairperson


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

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Zarin P. Bengali, Esq.  
Public Arbitrator

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Date of Service (For NASD Dispute Resolution use only)

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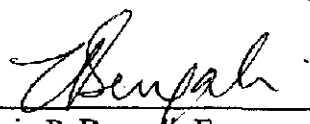
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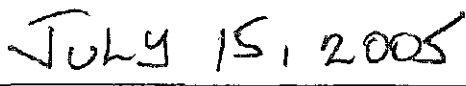
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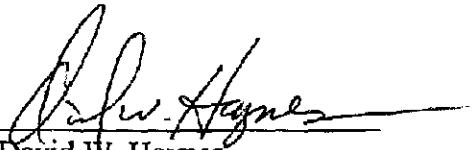
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David W. Haynes  
Non-Public Arbitrator

7-15-05  
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Signature Date

JULY 15, 2005  
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Date of Service (For NASD Dispute Resolution use only)