

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

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In the Matter of the Arbitration Between:

Anne M. McIntosh IRA; The Anne M. McIntosh Revocable Trust, Anne M. McIntosh, Trustee; and FBO Robert McIntosh Revocable Trust, Anne M. McIntosh, Trustee (Claimants) v. Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. and Nicholas Hopley (Respondents)

Case Number: 03-05320

Hearing Site: Boston, Massachusetts

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

**REPRESENTATION OF PARTIES**

Claimants Anne M. McIntosh IRA ("McIntosh IRA"); The Anne M. McIntosh Revocable Trust, Anne M. McIntosh, Trustee ("A. McIntosh Trust"); and FBO Robert McIntosh Revocable Trust, Anne M. McIntosh, Trustee ("R. McIntosh Trust") hereinafter collectively referred to as "Claimants": Timothy N. Schofield, Esq., Schofield & Associates, Boston, MA. Previously represented by: Daniel I. Small, Esq., Butters, Brazilian & Small, L.L.P., Boston, MA.

Respondents Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. ("Citigroup") and Nicholas Hopley ("Hopley") hereinafter collectively referred to as "Respondents": Sandra D. Grannum, Esq., Davidson & Grannum, LLP, Northvale, NJ. Previously represented by: Ellen Slipp, Esq., Citigroup Global Markets, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: July 17, 2003.

Claimants signed the Uniform Submission Agreement: July 10, 2003.

Joint Statement of Answer filed by Respondents on or about: September 11, 2003.

Respondent Citigroup signed the Uniform Submission Agreement: September 30, 2003.

Respondent Hopley signed the Uniform Submission Agreement: September 25, 2003.

**CASE SUMMARY**

Claimants asserted the following causes of action: failure to execute; breach of fiduciary duty; failure to supervise; negligence; breach of contract; and violation of M.G.L. c.93A. Claimants' claim involved unspecified securities.

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

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$500,000.00; punitive damages in the amount of \$1,000,000.00; interest; costs, including expert witness fees; and attorneys' fees.

Respondents requested that the Statement of Claim be dismissed with prejudice, and costs.

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

At the conclusion of Claimants' case, Respondents made a motion to dismiss Claimants' case-in-chief, on the grounds that the Claimants had not introduced sufficient evidence to support her claims. Claimants opposed the motion. After oral argument, the Panel granted Respondents' motion to dismiss.

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, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimants are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is denied.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Nicholas Hopley's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Nicholas Hopley must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

### **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	= \$500.00
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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 at the time of the events giving rise to the dispute. Accordingly, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. is a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00

Hearing process fee = \$5,000.00

**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:

Two (2) Pre-hearing sessions with Panel @ \$1,200.00 = \$2,400.00

Pre-hearing conferences: February 9, 2004 1 session  
February 12, 2004 1 session

Four (4) Hearing sessions @ \$1,200.00 = \$4,800.00

Hearing Dates: October 12, 2004 2 sessions  
October 13, 2004 2 sessions

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Total Forum Fees = \$7,200.00

1. The Panel has assessed \$3,600.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$3,600.00 of the forum fees jointly and severally against Respondents.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Forum Fees</u>	<u>= \$3,600.00</u>
Total Fees	= \$4,100.00
<u>Less payments</u>	<u>= \$1,700.00</u>
Balance Due NASD Dispute Resolution	= \$2,400.00

2. Respondent Citigroup is solely liable for:

<u>Member Fees</u>	<u>= \$8,550.00</u>
Total Fees	= \$8,550.00
<u>Less payments</u>	<u>= \$8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$3,600.00</u>
Total Fees	= \$3,600.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$3,600.00

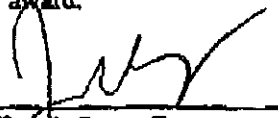
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Jeffrey L. Levy, Esq.	-	Public Arbitrator, Presiding Chairperson
Robert S. Rosenfeld, Esq.	-	Public Arbitrator
Linda A. Gelfand	-	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 is which is my award.

  
\_\_\_\_\_  
Jeffrey L. Levy, Esq.  
Public Arbitrator, Presiding Chairperson

10/21/04  
\_\_\_\_\_  
Signature Date

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Robert S. Rosenfeld, Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Linda A. Gelfand  
Non-Public Arbitrator

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

October 26, 2004

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

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Jeffrey L. Levy, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
Robert S. Rosenfeld, Esq.  
Public Arbitrator

October 25, 2004  
Signature Date

\_\_\_\_\_  
Linda A. Gelfand  
Non-Public Arbitrator

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Signature Date

October 26, 2004

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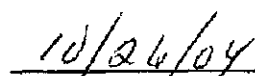
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Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
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Robert S. Rosenfeld, Esq.  
Public Arbitrator

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Signature Date

  
Linda A. Gelfand  
Non-Public Arbitrator

  
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October 26, 2004

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