

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

**Names of Claimants**

Mark D. Cornfield, Individually, as  
Beneficiary of his IRA, and as Custodian  
for Max Ryan Cornfield, Joshua Adam Kaplan,  
and Taylor Q. Cornfield, and Kelly A. Cornfield,  
Individually and as Beneficiary of her IRA

and

Case Number: 03-05514  
Hearing Site: Southfield, Michigan

**Names of Respondents**

Citigroup Global Markets, Inc., and  
Kenneth Mittelbrun

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**NATURE OF DISPUTE**

Customers v. Member and Associated Person

**REPRESENTATION OF PARTIES**

Mark D. Cornfield, Individually, as Beneficiary of his IRA, and as Custodian for Max Ryan Cornfield, Joshua Adam Kaplan, and Taylor Q. Cornfield, and Kelly A. Cornfield, Individually and as Beneficiary of her IRA ("Claimants") were represented by David M. Foster, Esq., Farmington Hills, Michigan.

Citigroup Global Markets, Inc. ("Citigroup") and Kenneth Mittelbrun ("Mittelbrun"), hereinafter referred to as "Respondents," were represented by H. Nicholas Berberian, Esq., Tina L. Winer, Esq., Tzivia A. Masliansky, Esq., and Jerry M. Santangelo, Esq., Neal, Gerber & Eisenberg, LLP, Chicago, Illinois.

**CASE INFORMATION**

The Statement of Claim was filed on or about July 28, 2003. Claimants submitted an Amended Statement of Claim on or about May 17, 2004. The Submission Agreement of Mark D. Cornfield, Individually, and as Beneficiary of his IRA, was signed on or about July 18, 2003. The Submission Agreement of Max Ryan Cornfield was signed by Mark D. Cornfield, as Custodian, on or about August 6, 2003. The Submission Agreement of Joshua Adam Kaplan, was signed by Mark D. Cornfield, as Custodian, on or about August 6, 2003. The Submission Agreement of Taylor Q. Cornfield, was signed by Mark D.

Cornfield, as Custodian, on or about August 6, 2003. The Submission Agreement of Kelly A. Cornfield, Individually and as Beneficiary of her IRA, was signed on or about July 18, 2003.

The Statement of Answer was filed jointly by Respondents, Citigroup and Mittelbrun, on or about November 3, 2003. The Submission Agreement of Respondent Citigroup was signed on or about September 24, 2003. The Submission Agreement of Respondent Mittelbrun was signed on or about October 4, 2003.

Claimants' Motion to Amend Their Statement of Claim was filed on or about May 17, 2004. Respondents' Response to the Motion was filed on or about June 2, 2004.

Claimants requested sanctions in correspondence dated September 29, 2004. Respondents responded to Claimants' request for sanctions on or about October 5, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty for recommending unsuitable investments; breach of fiduciary duty by Mittelbrun for failing to execute order(s) to sell securities; breach of fiduciary duty by Citigroup for failure to properly supervise their employees; fraudulent misrepresentation; innocent misrepresentation; violation of section 10(b) of the Securities Exchange Act and SEC Rule 10B-5 for issuing fraudulent and misleading research reports and omitting material information; making unsuitable recommendations that were covered up with a false new account suitability form and false confirmation slips; violation of Section 17(a)(3) of the Securities Exchange Act for mismarking confirmation slips; and violation of Michigan blue sky laws. The causes of action related to Claimants' allegations that Mittelbrun made recommendations that departed from Claimants' investment objectives, and Claimants' accounts were inappropriately concentrated in telecommunications and technology stocks. Claimants also asserted that their bond funds were liquidated and invested in equities, when investment income was needed. Claimants alleged that the stocks recommended and purchased which were unsuitable for attaining their investment objectives included Winstar Communications, Global Crossing, ITC Deltacom, Globalstar Telecomm, Cisco Systems, IDGE, AOL, and Compuware.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the (Amended) Statement of Claim fails to state a claim upon which relief may be granted; Claimants' alleged damages are speculative and not legally cognizable; to the extent that Claimants did suffer any of the damages alleged in the (Amended) Statement of Claim, such damages were not proximately caused by any act, representation, or omission of Respondents; Claimants' claims are barred by the applicable statute of limitations; Claimants are legally and equitably estopped from asserting their claims; and Claimants' claims are barred under principles of ratification.

### **RELIEF REQUESTED**

Claimants requested an award in an amount in excess of \$2,000,000.00, plus interest, costs, attorneys' fees, treble damages and punitive damages.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

The panel granted Claimants' Motion to Amend Their Statement of Claim on or about July 9, 2004.

The panel denies Claimants' request for sanctions herein.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Citigroup Global Markets, Inc., and Kenneth Mittelbrun, are jointly and severally liable for and shall pay to Claimants, Mark D. Cornfield, Individually, as Beneficiary of his IRA, and Kelly A. Cornfield, Individually, and as Beneficiary of her IRA, the sum of \$120,000.00 in compensatory damages;
- 2.) The claims brought by Claimants, Mark D. Cornfield, as Custodian for Max Ryan Cornfield, Joshua Adam Kaplan, and Taylor Q. Cornfield, are denied and dismissed with prejudice in their entirety;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied 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 = \$600.00

### **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 person at the time of the events giving rise to the dispute. In this matter, the member firm is Citigroup Global Markets, Inc.

Member surcharge = \$ 3,350.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$ 5,500.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 x \$450.00 = \$ 450.00  
Pre-hearing conference: June 16, 2004 1 session

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00  
Pre-hearing conference: April 6, 2004 1 session

Seven (7) Hearing sessions x \$1,200.00 = \$ 8,400.00  
Hearing Dates: October 18, 2004 2 sessions  
October 19, 2004 1 session  
October 20, 2004 2 sessions  
October 21, 2004 2 sessions

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Total Forum Fees = \$10,500.00

The Arbitration Panel has assessed \$5,025.00 of the forum fees to Mark D. Cornfield, Individually, as Beneficiary of his IRA, and as Custodian for Max Ryan Cornfield, Joshua Adam Kaplan, and Taylor Q. Cornfield, and Kelly A. Cornfield, Individually and as Beneficiary of her IRA.

The Arbitration Panel has assessed \$5,025.00 of the forum fees jointly and severally to Citigroup Global Markets, Inc., and Kenneth Mittelbrun.

**FEE SUMMARY**

Claimants, Mark D. Cornfield, Individually, as Beneficiary of his IRA, and as Custodian for Max Ryan Cornfield, Joshua Adam Kaplan, and Taylor Q. Cornfield, and Kelly A. Cornfield, Individually and as Beneficiary of her IRA, are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 5,025.00
Total Fees	= \$ 5,625.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 3,825.00

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

Member Fees	= \$ 9,600.00
Total Fees	= \$ 9,600.00
Less payments	= \$ 9,050.00
Balance Due NASD Dispute Resolution	= \$ 550.00

Respondents, Citigroup Global Markets, Inc., and Kenneth Mittelbrun, are jointly and severally liable for:

Forum Fees	= \$ 5,025.00
Total Fees	= \$ 5,025.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,025.00

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

**ARBITRATION PANEL**

Kenneth J. Safran, Esq. - Public Arbitrator, Presiding Chair  
Jeffry M. Bauer, Esq. - Public Arbitrator  
Frederick L. Mirbach, Jr. - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Kenneth J. Safran, Esq.  
Kenneth J. Safran, Esq.  
Public Arbitrator, Presiding Chair

10/25/04  
Signature Date

/s/ Jeffry M. Bauer, Esq.  
Jeffry M. Bauer, Esq.  
Public Arbitrator

10/25/04  
Signature Date

/s/ Frederick L. Mirbach, Jr.  
Frederick L. Mirbach, Jr.  
Non-Public Arbitrator

10/26/04  
Signature Date

10/26/04  
Date of Service (For NASD office use only)

2004/10/26

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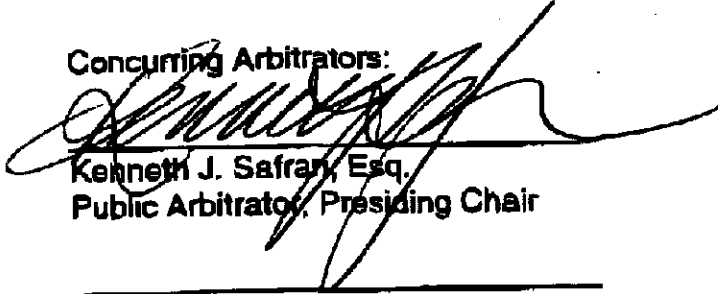
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Public Arbitrator, Presiding Chair

  
Jeffry M. Bauer, Esq.  
Public Arbitrator

Signature Date

10/25/2004  
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Date of Service (For NASD office use only)