

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

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In the Matter of the Arbitration Between

Names of Claimants

John E. and Susan Foddrill

and

Case Number: 03-05644  
Hearing Site: Houston, Texas

Names of Respondents

Citigroup Global Markets, Inc., and  
John Frakes

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**NATURE OF DISPUTE**

Customers v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

John E. and Susan Foddrill ("**Claimants**") were represented by Randall A. Pulman, Esq., and Luke Beshara, Esq., Pulman, Bresnahan & Pullen, LLP, San Antonio, Texas.

Citigroup Global Markets, Inc. ("**Citigroup**") and John Frakes ("**Frakes**"), hereinafter collectively referred to as "Respondents," were represented by Joseph A. Sack, Esq., Farkas & Sack, LLP, New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 1, 2003. The Submission Agreement of Claimants, John E. and Susan Foddrill, was signed on or about August 5, 2003.

The Joint Statement of Answer was filed by Respondents, Citigroup Global Markets, Inc. and John Frakes, on or about October 9, 2003. The Submission Agreement of Respondent, Citigroup Global Markets, Inc., was signed on or about January 2, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, misrepresentations, omission, suitability, failure to supervise and negligence. The causes of action related to the recommendation and purchase of Lazard Global Advisors, Dreyfus Laurel Funds, and Navellier and Associates, Inc. Claimants alleged that these investments were unsuitable because of the high degree of risk associated with small and mid-cap

stocks. In addition, Claimants asserted that Respondent Frakes did not sell their SBC stocks despite their requests he do so. Further, Claimants alleged that Respondent Frakes departed from a modern portfolio theory when he recommended that the optimum asset allocation for Claimants' portfolio consist of 95% stocks and 5% cash. Claimants asserted that this advice was unsuitable for their investment objective, which was retirement.

Unless specifically admitted in their Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimants failed to state a claim upon which relief can be granted; the damages for which Claimants seek to hold Respondents liable resulted in whole or in part from Claimants' own acts or omissions and were proximately caused by Claimants' failure to use reasonable means to mitigate the damages; Claimants are barred by the doctrines of waiver, estoppel, and by any statutes of limitations; and Claimants voluntarily assumed the risks of investing and are precluded from recovery herein.

#### **RELIEF REQUESTED**

Claimants requested an award in the amount of:

Actual/Compensatory Damages	\$150,000.00
Interest	Unspecified
Punitive/Exemplary Damages	Unspecified
Other Costs	Unspecified
Attorneys' Fees	Unspecified
Other Monetary Relief	Unspecified

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**

Respondent, John Frakes, did not file with the NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

Based on the evidence presented at the final hearing, the Panel recommended expunging this claim from, Respondent, John Frakes', CRD record.

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.) Respondent, Citigroup Global Markets, Inc., is liable for and shall pay to Claimants, John E. and Susan Foddrill, the sum of \$25,000.00 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The panel recommends the expungement of all reference to the above captioned arbitration from Respondent, John Frakes', registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09, Respondent, John Frakes, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive; 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 the non-refundable filing fee 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 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	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

### **Adjournment Fees**

Adjournments granted during these proceedings:

September 29-30, 2004, adjournment requested by Claimant	= \$ 1,125.00
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### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

September 29-30, 2004, adjournment requested by Claimant	= \$ 300.00
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### **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 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 x \$450.00	= \$ 450.00
Pre-hearing conference: August 20, 2004	1 session

Two (2) Pre-hearing sessions with Panel x \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: February 6, 2004	1 session
January 17, 2005	1 session

Ten (10) Hearing sessions x \$1,125.00	= \$ 11,250.00
Hearing Dates: September 28, 2004	1 session
August 2, 2005	2 sessions
August 3, 2005	3 sessions
August 4, 2005	2 sessions
August 5, 2005	2 sessions

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Total Forum Fees	= \$ 13,950.00
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The Arbitration Panel has assessed \$13,950.00 of the forum fees to Citigroup Global Markets, Inc.

**Fee Summary**

Claimants, John E. and Susan Foddrill, are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fee	= \$ 1,125.00
Three-Day Cancellation Fee	= \$ 100.00
Total Fees	= \$ 1,525.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 100.00

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

Member Fees	= \$ 5,200.00
Three-Day Cancellation Fee	= \$ 100.00
Forum Fees	= \$13,950.00
Total Fees	= \$19,250.00
Less payments	= \$ 5,850.00
Balance Due NASD Dispute Resolution	= \$13,400.00

Respondent, John Frakes, is liable for:

Three-Day Cancellation Fee	= \$ 100.00
Total Fees	= \$ 100.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 100.00

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

**ARBITRATION PANEL**

Irwin S. Sugerman - Public Arbitrator, Presiding Chair  
Antoinette M. Romano - Public Arbitrator  
James R. Augustine - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Irwin S. Sugerman  
Irwin S. Sugerman  
Public Arbitrator, Presiding Chair

August 11, 2005  
Signature Date

/s/ Antoinette M. Romano  
Antoinette M. Romano  
Public Arbitrator

August 11, 2005  
Signature Date

/s/ James R. Augustine  
James R. Augustine  
Non-Public Arbitrator

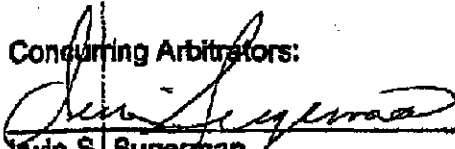
August 11, 2005  
Signature Date

August 11, 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Irwin S. Sugerman - Public Arbitrator, Presiding Chair  
Antoinette M. Romano - Public Arbitrator  
James R. Augustine - Non-Public Arbitrator

Concurring Arbitrators:

  
Irwin S. Sugerman  
Public Arbitrator, Presiding Chair

8-11-05  
Signature Date

Antoinette M. Romano  
Public Arbitrator

Signature Date

James R. Augustine  
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

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Public Arbitrator, Presiding Chair

*Antoinette M. Romano*  
Antoinette M. Romano  
Public Arbitrator

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Signature Date

*Aug. 11, 2005*  
Signature Date

James R. Augustine  
Non-Public Arbitrator

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Signature Date

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**Concurring Arbitrators:**

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Public Arbitrator, Presiding Chair

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Signature Date

Antoinette M. Romano  
Public Arbitrator

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James R. Augustine  
Non-Public Arbitrator

8/11/2005  
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