

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 03-06301

Melvin Stern, Claimant v. Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., Russell S. Peck, Laurie Ann Mittman, and Andrew G. Guzzetti, Respondents.

ATTORNEYS:

Claimant, Melvin Stern, ("Claimant"), appeared pro se, Cinnaminson, NJ.

Respondents, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., Russell S. Peck, Laurie Ann Mittman, and Andrew G. Guzzetti, (collectively "Respondent") appeared through their in-house counsel Ann Parry, Esq., New York, NY.

NATURE OF DISPUTE: Customer v. Member and Associated Persons

DATE FILED: August 26, 2003

CASE SUMMARY: Claimant alleged that Respondents misrepresented and omitted material fact regarding unsuitable Enron preferred stock, breached their fiduciary duty, and traded stock in his account without authorization. Claimant additionally alleged that Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. failed to supervise its representatives, Respondents Russell S. Peck, Laurie Ann Mittman, and Andrew G. Guzzetti. Claimant maintained that due to Respondents' action, his account suffered financial losses.

ARBITRATOR'S REPORT: Please see attached finding and decision.

Claim Data

Claim: \$21,335.55
Interest: \$1,872.85
Filing Fees: \$425.00
Other: Unspecified

Award Data

Award: \$.00
Interest: \$.00
Filing Fees: \$.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of the Claimant are dismissed in their entirety. 2) All requests for interest are denied. 3) All other relief requests are denied. 4) All claims against Respondents Laurie Ann Mittman and Andrew G. Guzzetti are dismissed.

5) The arbitrator recommends the expungement of all reference to the above-captioned arbitration from Respondents Laurie Ann Mittman, Andrew G. Guzzetti, and Russell S. Peck's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to members 99-09, Respondents Laurie Ann Mittman, Andrew G. Guzzetti, and Russell S. Peck must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

6) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited previously.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

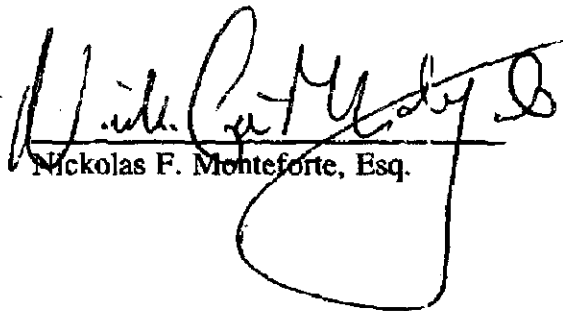
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Nickolas F. Monteforte, Esq.

Sole Public Arbitrator

AFFIRMATION

I, Nickolas F. Monteforte, Esq. do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Nickolas F. Monteforte, Esq.

Feb 9, 2004
Signature Date

February 25, 2004
Date of Service (For NASD-DR office use only)

NATIONAL ASSOCIATION OF SECURITIES DEALERS
DISPUTE RESOLUTION

MELVIN STERN	:	
	:	
Claimant	:	
	:	Arbitration No. 03-06301
	:	
v.	:	
	:	
Salomon SMITH BARNEY, Inc.,	:	Findings and Decision
Russell PECK, Laurie MITTMAN and	:	of the
Andrew Gregory GUZZETTI	:	Arbitrator
	:	
Respondents	:	

The Arbitrator's findings and decision in this matter is as follows.

STERN'S CONTENTIONS

FACTUAL STATMENT

Melvin Stern (hereinafter "STERN") is 65 years old and retired. His annual income, derived from social security and income from investments was approximately \$26, 000 in 2001. He spent the majority of his full-time working life, from 1963 to 1994 in the trucking business in Southern New Jersey, first in sales and then as a driver. He continued to work part-time until 2000, when he finally retired.

STERN opened his account with Respondent, Salomon, Smith Barney Inc. (hereinafter, SMITH BARNEY) in June of 1996. According to STERN, at the time he opened his account with SMITH BARNEY he stated that he had a fairly fixed income and that he was a moderate investor, with moderate risk tolerance. As of September 30, 2001 STERN had \$98, 039.00. In his Statement of Claim, STERN acknowledges that he has some investment experience.

In October of 2001 the Enron Corporation was in the middle of its fall from grace. On October 16th it announced that it had lost 618 million Dollars. The next day Enron announced that it had overvalued its assets by over a billion dollars. On October 24, 2001, STERN received a phone call from Respondent, Russell Peck, (hereinafter, PECK). PECK recommended Enron. STERN contends that PECK's call was a solicitation with a "hard sell."

According to STERN, when PECK called he pushed Enron preferred stock, which he claimed would deliver a dividend of 9%, delivered in monthly payments. PECK allegedly told STERN that Salomon had a "buy" rating on the Enron stock. STERN contends that PECK did not tell STERN about what STERN alleged was a key conflict of interest, whereby, Citigroup, Salomon SMITH BARNEY's parent company had arranged 4.8 billion Dollars of what STERN contended was covert financing for Enron. Citigroup allegedly structured the transaction so that the loan appeared as a profit on Enron's balance sheet.

Persuaded by PECK's sales pitch, STERN placed an order for 1000 shares at a price less than \$21.00. On October 25, 2001 PECK made an order for 1000 shares of Enron at \$20.83 per share. The next day on October 26, 2001, PECK cancelled the order for 1000 shares of Enron at \$20.83 per share. On the same day, October 26th, PECK executed a trade for 1000 shares of Enron at \$21.00 per share. STERN alleges that he called PECK, during the early afternoon of October 25, 2001, to cancel his order. Before STERN could make his request, he claims that PECK informed him that the purchase had been executed, and that STERN's price was "right on the money." STERN said that he understood this to mean the firm had executed the purchase of 1000 shares of Enron preferred Stock on Thursday, October 25, 2001, at a price of under \$21.00 per share. STERN stated that he did not believe that he could reject the transaction after its execution and, relying on the representations made by PECK, believed that the transaction was appropriate in relation to his investment objectives.

On October 26, 2001 Enron preferred had a low of \$20.65. STERN contends that PECK's execution of the trade at \$21.00 per share, despite the fact that STERN specified that he only wanted the stock at a purchase price of less than 21.00 per share constituted unauthorized trading.

The transaction at issue did not appear on STERN's October 2001 statement because the October 2001 statement cut off on Sunday, October 28, 2001, three business days prior to the end of the month. On or about December 15, 2001, STERN received his November 2001 statement. STERN Claims that on the same day, he also received confirmations for the three Enron-related transactions that PECK had executed in October, but by the time that he received the confirmation and his statement showing the trade, Enron stock price had fallen to \$0.67 per share.

STERN immediately noticed the Enron preferred Stock transaction occurred on Friday, October 26, 2001 and the stock had been purchased at a price of \$21.00 per share. STERN called PECK at this time to inquire about the discrepancy and PECK informed STERN he needed to contact the GUZZETTI to file a complaint.

On January 8, 2002 STERN met with the Branch Manager and Senior Vice President of SMITH BARNEY, Respondent, Andrew Gregory Guzzetti (hereinafter "GUZZETTI"), to discuss the transaction at issue and inform him of his dissatisfaction with PECK and the transaction. GUZZETTI told STERN that he would pass on STERN's complaint to

SMITH BARNEY's office in New York. In mid to late January 2002, SMITH BARNEY's Office in New York rejected STERN's complaint.

Not satisfied with this result, STERN attempted to contact GUZZETTI and was informed that he was no longer with the firm. According to GUZZETTI's CRD, he has not since worked in the securities industry. STERN Points out that Mr. GUZZETTI also has a claim against him in the NASD, where he (GUZZETTI) is accused of, among other things, failure to supervise. STERN spoke with an interim manager and was again told his claim was not valid.

On July 23, 2002, STERN met with PECK and Nelson Gaertner, Jr., who was both the new Vice President and branch manager. Another manager was also present. At this meeting, STERN gave Gaertner a copy of the complaint letter he had drafted and asked that it be forwarded to SMITH BARNEY's office in New York. Gaertner became upset and the meeting ended.

It was not until the July 23, 2002 meeting that SMITH BARNEY informed STERN that the purchase of the shares was above the price authorized by STERN because of a dividend issued on October 25, 2001, which dividend increased the purchase price. However, if the stock had gone ex-dividend the price of the stock should have dropped instead of increasing. STERN alleges that he contacted Enron Corporation to inquire about the dividend, and was informed that the firm had sent it to SMITH BARNEY. SMITH BARNEY informed STERN that he was not entitled to the dividend.

Thus, STERN alleges that that his purchase was postponed so SMITH BARNEY could receive the benefit of the dividend. On page 6 of STERN's November 2001 statement, SMITH BARNEY shows a \$166.67 cash dividend on November 30, 2001 from Enron stock as "other income." SMITH BARNEY deposited the \$166.67 dividend in STERN's bank account on December 3, 2001, as shown on page 6 of STERN's December statement. However, ten days later on December 13, 2001, SMITH BARNEY withdrew the exact same amount without explanation. STERN further states that an Enron company representative told him that he was entitled to the dividend. Enron also sent STERN a tax form showing that he was liable for a dividend of \$333.00.

In a letter dated October 7, 2002, Respondent, Laurie MITTMAN (hereinafter "MITTMAN"), the Compliance Officer, wrote a letter to STERN and stated that he had accepted the transaction based on his failure to follow SMITH BARNEY's immediate notification policy of informing the Branch Manager within 10 days after receiving his confirmation and/or statements, which disclosed the alleged unauthorized trade. However, STERN contends that he did not receive his confirmation for the transaction at issue until mid-December 2001 and did contact SMITH BARNEY as soon as he realized the discrepancy, and within the ten day period.

CLAIMANT'S LEGAL ARGUMENTS

A. UNSUITABILITY

STERN contends that prior to PECK's recommendation, Enron publicly announced several serious setbacks. On October 16, Enron announced a 618 million Dollar loss. The next day, Enron announced that because of accounting irregularities it had over-valued its assets by 1.01 billion Dollars. In support of his unsuitability allegations STERN states that PECK knew or should have known about Enron's massive losses, in that at the time of the recommendation, Enron's sudden devaluation was a top story. Thus, PECK allegedly knew or should have known that Enron was not a stable company, and, as such, was not a suitable investment for STERN. According to STERN, he had previously purchased dividend-producing stocks. To reliably produce a dividend a company must first have profits. PECK, therefore, knew or should have known that the Enron preferred stock that he sold to STERN would not likely produce a dividend in the long run, given the fact that Enron had just announced massive losses.

B. FRAUD BY MISREPRESENTATIONS AND OMISSIONS.

PECK contacted STERN in October 2001 for the purpose of persuading STERN to invest in a highly speculative security. Allegedly, PECK used relentless high-pressure sales tactics to induce STERN to invest in Enron preferred Stock. STERN contends that PECK misrepresented the nature of the security and omitted disclosures regarding the inherent risks of the Enron preferred stock when PECK knew or should have known that STERN would rely on these misrepresentations and omission.

STERN Further contends that PECK failed to disclose a key conflict of interest. Enron was an investment-banking customer of PECK's corporate parent Citigroup. Allegedly, according to STERN, by using off-shore, special-purpose entities, Citigroup had lent Enron 4.8 billion dollars in the guise of pre-payment contracts for oil and gas. Thus, STERN contends that the acts, omissions and misrepresentations of SMITH BARNEY and PECK were done fraudulently, intentionally and with wanton and reckless disregard of STERN's financial needs, causing him loss of interest, diminution of the value of his stock, and excessive transfer fees and commissions.

C. UNAUTHORIZED TRADING

On October 26, 2001, PECK effected the purchase of Enron preferred stock in STERN's account. PECK and SMITH BARNEY placed the stock in STERN's securities account. They also acted without STERN's prior authorization and approval of the terms of the transaction and without power of attorney or discretionary agreement. Thus, according to STERN, PECK and SMITH BARNEY acted contrary to his express orders. In addition, STERN contends that subsequent to the unauthorized purchase, PECK failed to advise STERN that the purchase could be rejected.

D. BREACH OF FIDUCIARY DUTY

STERN contends that he placed complete confidence and trust in SMITH BARNEY and PECK to handle his securities account in accordance with his stated investment objectives, thus giving rise to a fiduciary duty on their part. STERN alleges that the securities they purchased were not within his stated financial and investment objectives. He contends that SMITH BARNEY and PECK mishandled his account, showed a complete disregard for his best interests, and acted in reckless disregard of his rights, with full realization of the probable and foreseeable results. He further contends that the acts of SMITH BARNEY and PECK worked as a constructive fraud and constituted a breach of fiduciary, in that they: (a) made an unauthorized trade in his account; and (b) made material misrepresentations and omissions regarding that trade.

STERN alleges that SMITH BARNEY and MITTMAN, the Compliance Officer, showed bad faith in discharging their fiduciary duty to him when they carelessly investigated his complaint. In her October 7, 2002 letter, MITTMAN stated that STERN accepted the transaction because he failed to notify the Branch Office Manager of his complaint within 10 days of the trade. However, since he contended that he did not receive his confirmations until nearly two months after the trade date, STERN alleges that he properly notified SMITH BARNEY that the trade had taken place. He contends that if SMITH BARNEY and MITTMAN had diligently investigated the matter, they would have found that PECK had not mailed the confirmations to STERN until December. Thus, It was ridiculous for SMITH BARNEY and MITTMAN to deny STERN's claim because of their own failure to prevent or discover PECK's misconduct.

During the course of STERN's investigation into the Enron-related trades, he requested a copy of the sales ticket for the trade executed October 26, 2001. STERN felt that in light of the complex nature of the transactions, the sales ticket would help better establish the exact timeline of the situation. However, PECK refused STERN's request, stating that the ticket is a "proprietary business records (sic)." STERN contended that PECK and SMITH BARNEY demonstrated bad faith in discharging their fiduciary duty to STERN by interfering with STERN's investigation into his case and by failing to send STERN a copy of a sales ticket he requested.

E. FAILURE TO SUPERVISE

Here, STERN contends that SMITH BARNEY failed to maintain and enforce a proper system of internal supervision over PECK, in violation of SMITH BARNEY's duty as a control person within the meaning of the Securities Exchange Act, and, otherwise, to prevent the alleged activities by PECK. He further contends that SMITH BARNEY failed to provide adequate instruction with regard to supervision of transactions in securities by SMITH BARNEY on behalf of customers. Thus, STERN contends that as the person in charge of SMITH BARNEY's branch office, GUZZETTI, failed to adequately supervise the work of PECK. GUZZETTI should have enacted policies and procedures to ensure that PECK forwarded confirms and monthly statements to STERN in a timely fashion. He alleges that PECK's actions were outside of the norm, and even if

PECK had some reasonable explanation for cutting off the October 2001 statement on October 28 instead of October 31, he still should have disclosed the three, pending, Enron-related transactions on the October statement. Notwithstanding, STERN alleges that regardless of GUZZETTI's policies: a) MITTMAN should have exercised closer scrutiny over PECK's actions; b) MITTMAN should have ensured that PECK gave proper notice to STERN of the pending transactions; and c) subsequent to unauthorized purchase, SMITH BARNEY, GUZZETTI and MITTMAN failed to advise STERN that he could reject the purchase. Finally, despite his request for advice from SMITH BARNEY as to what action could be taken with regard to the subject transaction, SMITH BARNEY and MITTMAN advised STERN that all transactions had been authorized without further investigation into the matter, and that this also constituted a failure to supervise.

F. DAMAGES

STERN's damages are calculated by using the trading activity formula. The formula takes the unrealized trading loss and subtracts the fees. The unrealized trading loss is (current value)-(original purchase price). In this case, \$40.00- \$21,000.00- \$375.55, which equals a loss of \$21,335.55. Additionally, STERN contends that SMITH BARNEY owes interest on the loss, in the amount of \$1,872.85. The NASD filing fee is estimated at \$425.00. The total damages are \$23,633.40.

RESPONDENT'S CONTENTIONS

FACTUAL STATEMENT

In or about June 1996, STERN opened the subject individual account with financial consultant, PECK. At the time, STERN advised PECK that he had previously invested with Prudential Securities and Olde Discount and that he had been investing in stocks and bonds since approximately 1960. STERN further advised that his estimated annual income was \$40,000, and his estimated total and liquid net worth was \$700,000. STERN described his risk tolerance level as "moderate" and his primary investment objectives as liquidity and current income. STERN's objectives allowed for speculation, as indicated by the "yes" answer on the "Account Verification Profile." That form requested STERN to correct any inaccurate information and provide the changes to the GUZZETTI. STERN failed to do so, thereby confirming the accuracy of the information contained therein.

Beginning with STERN's initial purchase of a Salomon Brothers 9.50% preferred in July 1996, he has consistently sought investments with an attractive fixed yield. Over the years, STERN has discussed a number of investment options with PECK, including certificates of deposit, bonds, common stock and mutual funds. However, STERN's principal objective has always been to maximize his income.

In that regard, STERN asked PECK to keep him informed of any available initial offerings of

preferred stock or of "special" (no commission) secondary offerings. Accordingly, over the years, PECK brought a number of underwritings to STERN's attention. STERN has chosen to purchase approximately a dozen, including the following: Hercules Trust I in March 1999; PS Business Parks in April 1999; PGS Trust I in June 1999; Great Atlantic & Pacific Tea Company in August 1999; Household Capital Trust V in June 2000; and Puget Sound Energy Capital Trust II in May 2001. See STERN's monthly statements for the period from July 1996 through September 2003. STERN received prospectuses for each of those investments. Three of the above issues, Hercules and PGS, were high yield securities. The trade confirmations for those issues contained the following warning:

"SEC'S CREDIT RT NOT INV GRD. MAY POSE SIG RISKS, INCLU
HIGHER RISK OF DEFAULT ON INT & PRIN, REDUCED LIQ &
GTR PRICE FLUCT THAN INV GRD BDS."

The same risk disclosure language is contained in the monthly statements reflecting those three purchases. The PGS investment was \$2,500; the Hercules investment was \$25,000. Thus, although STERN now attempts to paint himself as a risk-averse investor, the foregoing investments demonstrate a willingness to commit \$30,000 to below investment grade securities in search of a higher return. By comparison, the subject Enron preferred was investment grade at the time of STERN's purchase. The Puget Sound trust preferred that STERN purchased several months before his Enron purchase carried a rating of BAA2/BBB-, which while still above investment grade, is a notch below the Enron preferred that he now claims was unsuitable.

Over the years, STERN has also invested in preferred stocks trading at below par, some of which were rated below investment grade. For example, in January 2000, STERN invested \$32,700 in a Public Storage Inc. preferred rated "BB" which is below investment grade. That preferred was called in October 2002 at \$40,938.44. STERN never claimed that his Public Storage investment was unsuitable.

Another example of the above strategy is STERN's purchase of an additional 1,000 shares of the Great Atlantic & Pacific Tea Company preferred at \$22.85 in June 2001. STERN had previously purchased the same stock in the syndicate offering at \$25.00. STERN repeatedly expressed satisfaction with this investment and even lamented the fact that he did not buy additional shares when the price had dropped to the \$9.00 range. As of June 30, 2001, that security was rated "BB," and was below investment grade. Yet, STERN never complained that that purchase was unsuitable.

Whenever PECK presented an investment to STERN, he always discussed the features of the investment, including the risk, the credit rating, and whether the investment was investment grade or below. Thus, given the disclosures from PECK and in the written materials provided to him, STERN cannot seriously claim that he was unaware of the risks inherent in his investments.

STERN's desire for yield and his willingness to incur a degree of risk was the basis for PECK's recommendation of the Enron preferred in October 2001. PECK was familiar with

the Enron preferred and was aware that it had been trading at a premium to its par value for the first three quarters of 2001. PECK noticed that the price of the preferred had declined following the ouster of Enron's chief financial officer. PECK reviewed the current research and credit report which showed an investment grade credit rating and a "buy" rating on the common stock with a price target of \$30 and \$1 billion of cash on hand. At the time, it appeared to PECK that Enron was a strong company that would emerge from the troubles that were plaguing it. These circumstances presented the kind of buying opportunity that STERN had wanted to take advantage of in the past—a quality investment at a value price.

On October 25, 2001, PECK discussed the foregoing with STERN and the fact that Enron had been the seventh largest company in the country with \$63 million in pipeline assets. PECK advised STERN that the previous day's low price was around \$19.00, the low for the current day was around \$20.00 and that the current ask was around \$22.00. STERN instructed PECK to place a good till canceled ("GTC") order to buy 1,000 shares at \$21.00. Contrary to the allegations in the Statement of Claim, STERN did not call back the same day and attempt to cancel the order, nor did PECK tell him on that day, that the order had "been done."

On the morning of October 26, PECK discovered that the price on STERN's GTC order had been reduced because the stock had gone ex-dividend the previous night. The trade confirmation stated "PRICE CHANGED DUE TO CASH DIVIDEND". SMITH BARNEY's system automatically readjusts GTC orders to reflect dividend payments that are made. Accordingly, it was necessary to cancel the order and reinstate it at \$21.00. When the order was reinstated on October 26, it was filled that morning. Shortly after the execution, PECK telephoned STERN and advised him that the order had been filled at \$21.00, the low so far that day. STERN was very pleased. He never complained that the trade was unauthorized. Since the 26th was a Friday, the transaction settled three business days later on October 31. Because the cut-off date for the October 2001 statement was Sunday, October 28, the purchase appeared on the statement for the following month: October 29-November 30, 2001.

Unfortunately, shortly after STERN's investment in the Enron preferred, Enron suffered a number of serious setbacks that negatively affected the price of its stock such as research and rating agencies downgrades and a failed merger with Dynegy Inc. Those events ultimately led to Enron's bankruptcy in early December 2001.

At or about the time of Enron's bankruptcy, STERN called PECK and expressed his dissatisfaction. However, he did not complain that the purchase was unauthorized or unsuitable. His complaint was performance-related. STERN requested a meeting with PECK's Branch Manager, GUZZETTI. That meeting occurred on January 8, 2002 and was attended by STERN, his brother, PECK and GUZZETTI. At that time, STERN complained that he had received bad research advice and that he had been unaware of the risks. Following that conversation, GUZZETTI noted that STERN had purchased similarly discounted preferred stock in the past (as well as below investment grade preferred stock) and that he was well aware of the risks of this type of investing. GUZZETTI declined to offer STERN any compensation.

In July 2002, STERN sent a written complaint, which, in accordance with SMITH BARNEY

procedure, was forwarded to the Compliance Department in New York City for response. MITTMAN of the Compliance Department investigated the matter, and by letter dated October 7, 2002, MITTMAN advised STERN that SMITH BARNEY was not prepared to offer him any compensation.

RESPONDNETS' LEGAL ARGUMENTS

A. UNSUITABILITY

STERN alleges that the recommendation of the Enron preferred was unsuitable due to Enron's recent announcement of losses and accounting irregularities. PECK was well aware that Enron had made some negative announcements at the time he presented it to STERN. Indeed, he discussed Enron's situation with STERN and the fact that the bad news had caused the price of the preferred to decline. Thus, STERN was aware of the risks, but chose to invest in the Enron preferred in spite of them. Moreover, this investment was similar in nature and degree of risk to others that STERN had made in the past and was less risky than others. STERN cannot now be heard to complain that this strategy was unsuitable merely because this particular investment was unprofitable. By the same token, he cannot accept the benefits of other, similar investments (e.g. Public Storage) that happened to be profitable.

Moreover, in spite of Enron's October 2001 announcement that it would be taking a \$1.2 billion charge to write down investments involving certain limited partnerships, it appeared to SMITH BARNEY and to others in the financial community that Enron's core business was still strong. Significantly, on the date that STERN's order was entered, the Enron preferred was still rated investment grade. Then, in early November 2001, Enron's prospects were brightened by the announcement of a proposed merger with Dynegy that would give the company a large infusion of capital. On November 28, 2001, however, the merger fell apart following the rating agencies' downgrade of Enron debt to high yield status. Shortly thereafter, Enron filed for bankruptcy protection.

Clearly, when PECK recommended the Enron preferred he had no way of knowing the fate that lay in store for Enron. To charge PECK with such knowledge, at a time when even the rating agencies believed that Enron would recover from its setback, is to impose liability by hindsight. Unfortunately, no one, including PECK, had a crystal ball in which to view the series of events that would ultimately lead to Enron's demise.

B. FRAUD BY MISREPRESENTATIONS AND OMISSIONS

Respondents deny that PECK used "high-pressure sales tactics" or that he failed to disclose the inherent risks of the Enron preferred, as alleged by STERN. How is it possible for a GTC order to be "high pressure" since it may never be filled? Moreover, Enron's collapse was a large and abrupt financial calamity. In the short space of time, Enron plummeted from the pinnacle of success - an investment grade company, ranked seventh in the Fortune 500, and one of the most admired companies in the business world - to bankruptcy. Investors, lenders and creditors lost billions of dollars. The shocking collapse revealed an enormous mismatch between the value of Enron's assets and the size of its liabilities. The company was

insolvent, and it became apparent that Enron had hugely misstated its financial condition. Enron's financial statements, prepared by Enron insiders working closely with Enron's highly regarded auditor, Arthur Andersen, had painted a picture of an immensely successful, thriving enterprise. In truth--a truth known only to those responsible for Enron's finances and financial reporting--the company was teetering on the edge of the financial abyss into which it fell on December 2, 2001.

Enron was a market leader in the marketing and trading of natural gas and electricity and had a profitable natural gas pipeline business to go along with a rapidly growing energy outsourcing business. SMITH BARNEY, like the rest of Wall Street, believed that Enron had a substantial business and thus did not and could not anticipate the events that led to Enron's rapid deterioration in the latter part of 2001. Indeed, like many other market participants that relied on the integrity of Enron's financial statements, SMITH BARNEY's parent, Citigroup, lost substantial sums of money as a lender to Enron.

When Enron's stock first began to decline, it moved in concert with other similar stocks as part of a shift away from power/energy in reaction to the California crisis and because of the overall economic slowdown. Even after Enron surprised the entire investment community by its announcement on October 17, 2001 that it would be taking a \$1.2 billion charge to write down investments involving certain limited partnerships, it appeared that the Enron's core business remained strong. SMITH BARNEY was hopeful that a merger between Dynegy and Enron would take place, salvaging value for Enron's equity investors. Unfortunately, on November 28, 2001, the rating agencies downgraded Enron to high yield status, leading to Enron's bankruptcy filing on December 2, 2001. Since SMITH BARNEY's personnel work with publicly available information, a Company's certified financial statements are at the heart of their work. They assume that such statements, certified by the Company's outside accountants, are accurate and that they fairly present the Company's financial condition. In Enron's case, that core assumption now appears to have been mistaken. The Company's certified financial statements, upon which SMITH BARNEY personnel reasonably relied as reflective of Enron's true financial condition, appear not to have been reliable, accurate or complete. As a result, SMITH BARNEY, along with the vast majority of other financial institutions on Wall Street, continued to recommend Enron stock through late October.

STERN's allegation that SMITH BARNEY had a conflict of interest with respect to Enron is utterly lacking in merit. Most fundamentally, the work performed for Enron by SMITH BARNEY's parent, Citigroup, was undertaken in good faith and comported with the laws and industry standards prevailing at the time. SMITH BARNEY is a division and service mark of Citigroup Global Markets, Inc. f/k/a Salomon SMITH BARNEY, Inc. Citigroup, did not, as STERN states, arrange for \$4.8 billion of "covert financing" for Enron. Consistent with industry practice, Citigroup relied on Enron and its auditor, Arthur Andersen, to account appropriately for the transactions that Citigroup executed with Enron. The transactions to which STERN refers were enormously complicated. The accounting rules that applied to these transactions were highly nuanced, complex and subject to broad interpretation (and, in some cases, substantial debate). Citigroup explicitly left these accounting judgments to Enron and its accounting experts, who had the responsibility, the expertise, and the complete information necessary to make the accounting judgments that were required. The

Citigroup employees who worked on transactions with Enron relied on Enron and Andersen to attend to Enron's accounting and financial reporting obligations. They believed that Enron and Andersen were addressing these issues in good faith, and they never intended, and did not know, that Enron was deceiving its auditor or that Enron and Andersen were accounting for the transactions in ways that were intentionally wrong.

C. UNAUTHORIZED TRADING

SMITH BARNEY contends that this claim is absurd. SMITH BARNEY points out that on the one hand, STERN admits that he instructed PECK to enter an order to purchase the Enron preferred at \$21.00. On the other hand, he claims that the order was unauthorized. As explained above, PECK entered STERN's order on October 25, 2001 at \$21.00, but the price was automatically adjusted downward by the system due to the payment of a dividend. PECK simply canceled the order the following morning and re-entered it to reflect STERN's instructions.

At the time of Enron purchase, STERN was mailed a trade confirmation. The reverse side of the trade confirmation clearly states:

"Please review this document carefully. If the details of any transaction are incorrect, you must notify the GUZZETTI of the office servicing your account immediately. *Failure to make such notification within three (3) days of receipt of this document constitutes your acceptance of the transaction(s).*" [Emphasis added by Respondent]

In spite of the foregoing, STERN failed to complain on a timely basis.

SMITH BARNEY alleges that it is difficult to believe STERN's allegation that he did not receive the trade confirmations until December 15th. According to SMITH BARNEY, trade confirmations are generated automatically out of SMITH BARNEY's New York office, and are mailed out immediately. SMITH BARNEY re-iterates that the terms of the confirmations require that any objections be made within three days, and STERN failed to do so. PECK recalls STERN stating at some point that he had a lot going on in his life at the time of the Enron purchase and that he might have simply neglected to open the trade confirmations at the time they were received.

In any event, STERN admits that he knew on October 26 that his GTC order had been filled at \$21.00. Regardless of when he received the trade confirmations, he was aware of the Enron purchase on the day that it was executed. If STERN had had any objections, he should have voiced them immediately. Instead, he accepted the trade and did not complain until after his investment suffered the ill effects of the Enron bankruptcy filing. Thus, even if the purchase was unauthorized, which Respondents strenuously deny, STERN's failure to timely disavow it constitutes a bar to his claim under principles of waiver, ratification and estoppel.

D. BREACH OF FIDUCIARY DUTY

Respondents point out that they have already addressed the unsuitability, unauthorized trading and

misrepresentation components of this claim. Thus, the remainder of its legal contention is directed to what it contends is STERN's baseless allegation that MITTMAN, a member of the Compliance Department who investigated STERN's complaint, had a fiduciary duty to STERN with respect to her investigation and that she breached that duty.

First, SMITH BARNEY points out that there is no legal basis for STERN's allegation that MITTMAN had a fiduciary duty to him. Indeed, the extent of a brokerage firm's fiduciary duties to its customers are limited to certain situations and transactions and do not extend to Compliance Department employees investigating a complaint after the fact. Second, SMITH BARNEY states that there was a sound basis for the decision by SMITH BARNEY to reject STERN's customer complaint. SMITH BARNEY could well have concluded that STERN's assertion that he did not receive the trade confirmations until December was not credible given the fact that SMITH BARNEY has a well-established system by which trade confirmations are mailed out from New York City immediately following a trade. In addition, the fact that STERN admits that he was aware of the Enron purchase on the day that it was executed, yet failed to complain for several weeks further undermines the credibility of his unauthorized trading claim. And STERN's unsuitability claim is belied by his prior investment history. Indeed, this complaint appears to be motivated by disappointment with Enron's performance rather than by legitimate claims of wrongdoing.

Finally, Respondents had no "fiduciary duty" to provide STERN with order tickets. Indeed, SMITH BARNEY has policies governing what types of documents it deems appropriate to provide to its customers. Clearly, the individual respondents were only acting in accordance with those policies. Moreover, STERN's alleged losses were caused by his investment in the Enron preferred not by his failure to receive documentation after the fact.

E. FAILURE TO SUPERVISE

Even if STERN's underlying allegations were true, which Respondents deny, STERN has failed to allege any activity or any pattern of activity that would give rise to a failure to supervise claim. First, STERN seeks to blame branch personnel, namely Mr. GUZZETTI, for his alleged failure to receive trade confirmations and monthly statements on a timely basis. As stated above, branch personnel have no responsibility for mailing out trade confirmations and monthly statements. Rather, those functions are handled on a centralized basis out of the New York City office. Thus, even if there were any failures in that area, which Respondents deny, branch personnel cannot be blamed.

Second, STERN attempts to implicate Laurie MITTMAN (the so-called "Compliance Officer") for his alleged failure to receive monthly statements and trade confirmations. MITTMAN works in the customer complaint area of the Compliance Department and is located in New York City. She has absolutely no supervisory responsibilities over PECK or any other SMITH BARNEY branch personnel. Nor does she have any responsibility for the mailing of the monthly statements and trade confirmations. Indeed, Ms. MITTMAN did not become involved in this matter until July 2002, nine months after the transaction at issue. Clearly, her actions (whether or not STERN agrees with the decision to reject his claim) cannot form the basis of any personal liability on her part.

RESPONDENT'S MOTION TO DISMISS THE CLAIMS AGAINST LAURIE MITTMAN AND ANDREW GUZZETTI

As demonstrated above, STERN's allegations against MITTMAN and GUZZETTI are meritless. In any event, it is undisputed that the involvement of both MITTMAN and GUZZETTI did not begin until well after the subject investment was made. For that reason, there can be no causal connection between their actions and STERN's alleged loss. Accordingly, the claims against these two individuals must be dismissed.

GUZZETTI first became involved in or about January 2002 when he met with STERN, his brother and PECK. By that time, STERN's Enron investment had already lost almost all of its value. As described above, Mr. GUZZETTI met with STERN in early January 2002, reviewed and rejected his complaint and then later forwarded STERN's written complaint to the Compliance Department in New York in accordance with SMITH BARNEY procedure. The "CRD" report attached to Claimant's Statement of Claim has no relevance here. In fact, the case that it references was resolved and the panel recommended that Mr. GUZZETTI's CRD record be expunged of all references to the matter.

MITTMAN did not become involved in this matter until July 2002 when STERN's written complaint was forwarded to her for response. MITTMAN wrote STERN an acknowledgement letter on July 31, 2002 and a follow-up letter on October 7, 2001. That was the extent of MITTMAN's involvement.

Given the substantive lack of merit to STERN's claims as well as the fact that these individuals were involved briefly, after the fact, under no theory could they be individually liable to STERN for his alleged damages. Accordingly, they must be dismissed as respondents in this matter.

FINDINGS AND DECISION

The arbitrator has considered the positions of all parties, as set forth in the Statement of Claim, the Answer and the exhibits submitted in response to each. In all instances, the Arbitrator finds that the position of the Respondents is at least equally as credible, if not more credible than the position of Claimant. Specifically, the arbitrator finds that:

1. Based on Claimant's investment history, as related by Respondents, and not rebutted by Claimant, and the ratings assigned to the Enron preferred stock on October 25 and 26, 2001, the Arbitrator finds that the Enron preferred stock purchased by PECK was not unsuitable for STERN.
2. The events of October 25, and 26, 2001, as presented by respondents are more representative of what actually occurred than the presentation of Claimant.
3. The arbitrator finds that SMITH BARNEY's closing of the October 2001 Statement as of October 28, 2001 is both logical and reasonable and to be expected in the normal course of business.

4. The formal closing of the subject Enron transaction on October 31, 2001, was also done in the normal course of business, and was not under the control of either Respondent, PECK, or Respondent, GUZZETTI.

5. The Arbitrator finds that STERN's statement that he did not receive the Confirmation until December 15, 2001 lacks sufficient credibility to be considered as proof of what actually happened. According to SMITH BARNEY, trade confirmations are generated automatically out of SMITH BARNEY's New York office, and are mailed out immediately. The Arbitrator further finds that neither PECK nor GUZZETTI had any control over when the confirmations for the subject transactions were mailed to Claimant, nor has STERN presented any evidence to prove that it was PECK's or GUZZETTI's duty to mail the confirmations. Respondent's statement that the confirmation was automatically mailed out by the New York Office immediately after the transaction is more representative of what actually happened and, thus, more credible. Further, PECK recalls STERN stating at some point that he had a lot going on in his life at the time of the Enron purchase and that he might have simply neglected to open the trade confirmations at the time they were received. PECK's relating of STERN's statement was unrebutted by Stern, and is considered by the Arbitrator as a declaration against interest by Stern. Thus, the credible evidence leads to the conclusion that the confirmations were mailed to Claimant by the SMITH BARNEY New York Office immediately after the transaction, and, on the basis of the credible evidence, the Arbitrator concludes that the confirmations were received by STERN in the normal course of business shortly after the transaction occurred. Claimant's statement that he did not receive the Confirmations until he received his November statement on or about December 15, 2001 is not credible in light of this evidence.

6. The Arbitrator accepts as fact SMITH BARNEY's representation that the terms of the confirmations require that any objections be made within three days, and STERN failed to do so.

7. The Arbitrator declines to draw any inference from Claimant's statement to the effect that that GUZZETTI has a claim against him in the NASD, where he (GUZZETTI) is accused of, among other things, failure to supervise. Not only did STERN fail to present any evidence as to the outcome of the complaint against GUZZETTI, but, to the contrary, Respondent has indicated that the matter was resolved, and the Panel in that action recommended that GUZZETTI's CRD record be expunged of all references to the matter. On the basis of the findings of this, other Arbitration Panel, the Arbitrator, herein, finds as fact that GUZZETTI did not "fail to supervise" in the claim referenced by Stern, above.

8. The Arbitrator finds that Respondents, PECK and SMITH BARNEY, were well within their rights to refuse to produce the order tickets after STERN requested them. STERN's request to produce was not made in the course of Arbitration and/or litigation, and thus there was no contractual, statutory, judicial or other duty to STERN that required production of these documents. Under the circumstances, the order tickets were proprietary information that Respondents had no obligation to provide to STERN.

Further, Respondents had no "fiduciary duty" to provide STERN with order tickets. SMITH BARNEY has stated that it has policies governing what types of documents it deems appropriate to provide to its customers. The individual respondents were properly acting in accordance with those policies.

9. Respondents admit that SMITH BARNEY is a division and service mark of Citigroup Global Markets, Inc. f/k/a Salomon SMITH BARNEY, Inc. STERN contends, inter alia, that Citigroup, Salomon SMITH BARNEY's parent company, had arranged 4.8 billion Dollars of what STERN alleged was covert financing for Enron. Citigroup supposedly structured the transaction so that the loan appeared as a profit on Enron's balance sheet. STERN has failed to prove this allegation or any other inferred allegation that SMITH BARNEY had a conflict of interest with respect to Enron, or that PECK or GUZZETTI or any other respondent should have been aware of this. Further, any inference that might have been drawn from this allegation, had there been a prima facie presentation of credible evidence as to its occurrence, has been rebutted by Respondent's statement that the work performed for Enron by SMITH BARNEY's parent, Citigroup, was undertaken in good faith and comported with the laws and industry standards prevailing at the time. The credible evidence presented in this arbitration supports a finding that Citigroup, did not, as STERN states, arrange for \$4.8 billion of "covert financing" for Enron. The credible evidence also supports a finding that, consistent with industry practice, Citigroup relied on Enron and its auditor, Arthur Andersen, to account appropriately for the transactions that Citigroup executed with Enron. The transactions to which STERN refers were enormously complicated. The accounting rules that applied to these transactions were highly nuanced, complex and subject to broad interpretation (and, in some cases, substantial debate). Citigroup explicitly left these accounting judgments to Enron and its accounting experts, who had the responsibility, the expertise, and the complete information necessary to make the accounting judgments that were required. The Citigroup employees who worked on transactions with Enron relied on Enron and Andersen to attend to Enron's accounting and financial reporting obligations. They believed that Enron and Andersen were addressing these issues in good faith, and they never intended, and did not know, that Enron was deceiving its auditor or that Enron and Andersen were accounting for the transactions in ways that were intentionally wrong.

10. The Arbitrator finds that Claimant has failed to sustain its burden of proof with respect to any and all of following legal contentions, as alleged in his Statement of Claim:

- a) Unsuitability
- b) Fraud by Misrepresentations and Omissions
- c) Unauthorized Trading
- d) Breach of Fiduciary Duty
- e) Failure to Supervise

Motion to Dismiss the Claims Against Respondents, Mittman and Guzzetti

Respondent's Motion to Dismiss the Claims Against Laurie Mittman and Andrew

Guzzetti is granted. As demonstrated above, STERN's allegations against MITTMAN and GUZZETTI have not been substantiated. Since there has been no finding that Peck's actions violated any duty to Stern, it follows that neither SMITH BARNEY, GUZZETTI nor MITTMAN failed to maintain and enforce a proper system of internal supervision over PECK, in violation of SMITH BARNEY's duty as a control person within the meaning of the Securities Exchange Act, and, otherwise, to prevent the alleged activities by PECK.

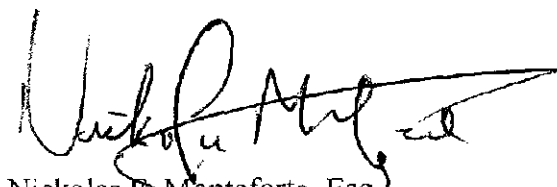
The Arbitrator specifically finds that MITTMAN was an employee of Smith Barney, assigned to the Compliance Office. As a part of her employment she was assigned to do an "after the fact" investigation of STERN's complaint. MITTMAN, individually, was not charged with controlling PECK or any other Respondent, and had the Arbitrator finds that she, individually, had no duty to STERN in this matter. MITTMAN's limited involvement was to investigate Sterns complaint, after which she wrote STERN an acknowledgement letter on July 31, 2002 and a follow-up letter on October 7, 2001.

Accordingly, the claims against Respondents GUZZETTI and MITTMAN are dismissed.

The Arbitrator finds that the record so warrants, and recommends that the records of Respondents, PECK and GUZZETTI, and to the extent that it is possible, the record of Respondent MITTMAN, be expunged of all references to the claim filed herein.

The Arbitrator finds for the Respondent on all aspects of the Claim asserted by Claimant herein. Any matter not specifically addressed herein is to be considered as included within the finding for Respondents on all issues.

All costs associated with this matter, including forum and arbitrators fees are to be paid by Claimant.

A handwritten signature in black ink, appearing to read "Nickolas F. Monteforte", with a long horizontal flourish extending to the right.

Nickolas F. Monteforte, Esq.
Arbitrator

Dated: January 26, 2004