

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

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In the Matter of the Arbitration Between:

Robert F. Phair (Claimant) vs. Salomon Smith Barney and Timothy V. Mulhern (Respondents)  
Case Number 03-08633

Consolidated with

Susan T. Kalish (Claimant) vs. Salomon Smith Barney and Timothy V. Mulhern (Respondents)  
Case Number 04-00458

Hearing Site: New York, New York

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Nature of the Dispute: Case # 03-08633: Customer vs. Member and Associated Person

Nature of the Dispute: Case # 04-00458: Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Claimant Robert F. Phair hereinafter referred to as "Phair": Ronald J. Campione, Esq. Budd Larner, Short Hills, NJ. Previously represented by Michael P. Rubas, Esq., Budd Larner Rosenbaum Greenberg & Sade, Short Hills, NJ. (03-08633)

Claimant Susan T. Kalish hereinafter referred to as "Kalish": Ronald J. Campione, Esq. Budd Larner, Short Hills, NJ. Previously represented by Michael P. Rubas, Esq., Budd Larner Rosenbaum Greenberg & Sade, Short Hills, NJ. (04-00458)

Respondents Salomon Smith Barney n/k/a Citigroup Global Markets, Inc. ("Citigroup") and Timothy V. Mulhern ("Mulhern"), hereinafter collectively referred to as "Respondents": Hugo Hilgendorff IV, Esq., Citigroup Global Markets, Inc. Previously represented by Joseph L. Calabrese Esq., Citigroup Global Markets, Inc. (03-08633 and 04-00458)

**CASE INFORMATION**

03-08633

Statement of Claim filed on or about: December 3, 2003.

Phair signed the Uniform Submission Agreement: October 26, 2003.

Joint Statement of Answer filed by Respondents on or about: March 16, 2004

Citigroup signed the Uniform Submission Agreement: March 16, 2004.

Mulhern signed the Uniform Submission Agreement: March 29, 2004.

04-00458

Statement of Claim filed on or about: January 21, 2004.  
Kalish signed the Uniform Submission Agreement: January 14, 2004.

Joint Statement of Answer filed by Respondents on or about: March 18, 2004.  
Citigroup signed the Uniform Submission Agreement: March 18, 2004.  
Mulhern signed the Uniform Submission Agreement: March 8, 2004.

**CASE SUMMARY**

03-08633

Phair asserted the following causes of action: breach of fiduciary duty, breach of contract, violation of Section 10(b) and Rule 10b-5, common law fraud, consumer fraud, violation of NASD rules, and respondeat superior. The causes of action relate to unspecified securities.

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

04-00458

Kalish asserted the following causes of action: breach of fiduciary duty, breach of contract, violation of Section 10(b) and Rule 10b-5, common law fraud, consumer fraud, violation of NASD rules, and respondeat superior. The causes of action relate to 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**

03-08633

Phair requested compensatory damages in the amount of \$338,834.00, compensatory damages in the amount of \$348,374.99 with interest, punitive or exemplary damages of no less than \$500,000.00, attorneys' fees, and for such other relief as the Panel may deem just and proper.

Respondents requested that the Statement of Claim be dismissed with prejudice with costs associated with the arbitration proceeding, and expungement of Respondent Mulhern's CRD record.

04-00458

Kalish requested compensatory damages in the amount of \$22,559.00, plus lost opportunity damages, punitive or exemplary damages of no less than \$25,000.00, attorneys' fees, and for such other relief as the Panel may deem just and proper.

Respondents requested that the Statement of Claim be dismissed with prejudice with costs associated with the arbitration proceeding and expungement of Respondent Mulhern's CRD record.

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

On or about July 20, 2005, the Panel granted the parties request to consolidate Case Numbers 03-08633 and 04-00458.

On or about January 17, 2006, Phair dismissed all claims with prejudice against Mulhern and resolved all claims with Citigroup as part of a confidential settlement agreement.

On or about January 17, 2006, Kalish dismissed all claims with prejudice against Citigroup and Mulhern.

On or about January 20, 2006, the parties informed NASD Dispute Resolution that this case was settled.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. Claimant Phair dismisses its claims with prejudice against Citigroup and Mulhern.
2. Claimant Kalish dismisses its claims with prejudice against Citigroup and Mulhern.
3. The Panel recommends the expungement of all reference to the above captioned arbitrations from Respondent Timothy V. Mulhern'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 Timothy V. Mulhern must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement

directive.

4. The parties shall bear their respective costs, including attorney's fees.
5. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee (03-08633)	= \$ 500.00
Initial claim filing fee (04-00458)	= \$ 175.00

#### **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 Citigroup Global Markets, Inc. is a party.

<u>03-08633</u>	
Member Surcharge	= \$ 2,800.00
Pre-hearing Process Fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

<u>04-00458</u>	
Member surcharge	= \$ 875.00
Pre-hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 1,000.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

<u>03-08633</u>	
December 12-14, 2004, adjournment by Claimant Phair	= \$ 1,200.00

<u>04-00458</u>	
March 1-2, 2005, adjournment by Respondents	= \$ 450.00

#### **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:

January 24-27, 2006, settled by the parties (03-08633 and 04-00458)	= \$ 300.00
Claimant Phair's share	= \$ 75.00
Claimant Kalish's share	= \$ 75.00
Respondent Citigroup's share	= \$ 75.00
Respondent Mulhern's share	= \$ 75.00

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

The 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. Forum fees associated with these proceedings are:

##### 03-08633

(2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 2,400.00
Pre-hearing conferences: August 5, 2004 1 session	
September 19, 2005 1 session	

##### 04-00458

(1) Pre-hearing conference session with a single arbitrator @ \$450.00 /session	= \$ 450.00
Pre-hearing conference: June 29, 2004 1 session	

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Total Forum Fees	= \$ 2,850.00
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##### 04-00458

Pre-hearing conference held on June 29, 2004:

1. The Panel assessed \$150.00 of the forum fees to Claimant Kalish.
2. The Panel assessed \$150.00 of the forum fees to Respondent Citigroup.
3. The Panel assessed \$150.00 of the forum fees to Respondent Mulhern.

##### 03-08633

Pre-hearing conference held on August 5, 2004:

1. The Panel assessed \$600.00 of the forum fees to Claimant Phair.
2. The Panel assessed \$300.00 of the forum fees to Respondent Citigroup.
3. The Panel assessed \$300.00 of the forum fees to Respondent Mulhern.

##### 03-08633 and 04-00458

Pre-hearing conference held on September 19, 2005:

1. The Panel assessed \$600.00 of the forum fees to Claimant Phair
2. The Panel assessed \$600.00 of the forum fees to Claimant Kalish.

**Fee Summary**

**03-08633**

1. Claimant Phair is solely liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	= \$ 600.00
Total Fees	= \$ 2,300.00
<u>Less payments</u>	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 600.00

2. Respondent Citigroup is solely liable for:

Member Fees	= \$ 8,550.00
<u>Forum Fees</u>	= \$ 300.00
Total Fees	= \$ 8,850.00
<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 300.00

3. Respondent Mulhern is solely liable for:

<u>Forum Fees</u>	= \$ 300.00
Total Fees	= \$ 300.00
<u>Less payments</u>	= \$ 0.00
Total Fees	= \$ 300.00

**04-00458**

1. Claimant Kalish is solely liable for:

Initial Filing Fee	= \$ 175.00
<u>Forum Fees</u>	= \$ 150.00
Total Fees	= \$ 325.00
<u>Less payments</u>	= \$ 325.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Mulhern is solely liable for:

<u>Forum Fees</u>	= \$ 150.00
Total Fees	= \$ 150.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 150.00

3. Respondents Citigroup and Mulhern are jointly and severally liable for:

<u>Adjournment Fee</u>	= \$ 450.00
Total Fees	= \$ 450.00
<u>Less payments</u>	= \$ 450.00
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondent Citigroup is solely liable for:

Member Fees	= \$ 2,625.00
<u>Forum Fees</u>	= \$ 150.00
Total Fees	= \$ 2,775.00
<u>Less payments</u>	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 150.00

03-8633 and 04-00458

1. Claimant Phair is solely liable for:

Forum Fees	= \$ 600.00
<u>Three-Day Cancellation Fee</u>	= \$ 75.00
Total Fees	= \$ 675.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 675.00

2. Claimant Kalish is solely liable for:

Forum Fees	= \$ 600.00
<u>Three-Day Cancellation Fee</u>	= \$ 75.00
Total Fees	= \$ 675.00
<u>Less payments</u>	= \$ 300.00
Balance Due NASD Dispute Resolution	= \$ 375.00

3. Respondent Citigroup is solely liable for:

<u>Three-Day Cancellation Fee</u>	= \$ 75.00
Total Fees	= \$ 75.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 75.00

4. Respondent Mulhern is solely liable for:

<u>Three-Day Cancellation Fee</u>	= \$ 75.00
Total Fees	= \$ 75.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 75.00

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

**ARBITRATION PANEL**

Douglas John Baumann, Esq.	-	Public Arbitrator, Presiding Chairperson
William C. Bieluch, Jr., Esq.	-	Public Arbitrator
Nicholas J. Chohey	-	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.

  
\_\_\_\_\_  
Douglas John Baumann, Esq.

Public Arbitrator, Presiding Chairperson

5-1-06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Nicholas J. Chohey  
Non-Public Arbitrator

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

**Dissenting Arbitrator's Signature**

\_\_\_\_\_  
William C. Bieluch, Jr., Esq.  
Public Arbitrator

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

June 13, 2006  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)



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William C. Bieluch, Jr., Esq.	-	Public Arbitrator
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Douglas John Baumann, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
\_\_\_\_\_  
Nicholas J. Chohey  
Non-Public Arbitrator

May 9, 2006  
\_\_\_\_\_  
Signature Date

**Dissenting Arbitrator's Signature**

\_\_\_\_\_  
William C. Bieluch, Jr., Esq.  
Public Arbitrator

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Signature Date

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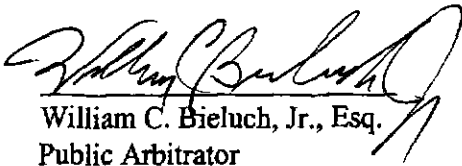
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Public Arbitrator, Presiding Chairperson

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