

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

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In the Matter of the Arbitration Between:

Peter T. Gutzan (Claimant) v. Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc.,  
Robert J. Cutrupi, and Melanie H. Charron (Respondents)

Case Number: 03-09089

Hearing Site: Newark, New Jersey

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Nature of the Dispute: Customer v. Member and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimant Peter T. Gutzan ("Gutzan") hereinafter referred to as "Claimant": A. Jude Avelino, Esq. and Vincent J. Imbesi, Esq., Avelino & Associates, P.C., New York, NY.

Respondents Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. ("Citigroup"), Robert J. Cutrupi ("Cutrupi"), and Melanie H. Charron ("Charron") hereinafter collectively referred to as "Respondents": Etta M. Gumbs, Esq., Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., New York, NY. Respondent Cutrupi was also represented by Liam O'Brien, Esq., Liam O'Brien & Associates P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: December 22, 2003.

Claimant signed the Uniform Submission Agreement: December 17, 2003.

Joint Statement of Answer filed by Respondents on or about: March 10, 2004.

Respondent Citigroup signed the Uniform Submission Agreement: April 12, 2004.

Respondent Cutrupi signed the Uniform Submission Agreement: March 17, 2004 and May 13, 2004.

Respondent Charron did not sign the Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized purchases of securities; negligence; churning; breach of fiduciary duty; common law fraud; lack of suitability; failure to supervise; breach of contract; respondeat superior; and violations of the rules of the National Association of Securities Dealers, Inc. (the "NASD"). Claimant's claim involved shares of Global Crossing and WorldCom.

Respondents denied the allegations of wrongdoing set forth in the Statement of Claim and asserted the following defenses: 1. Respondents state that Claimant ratified the investment decision in the subject account by failing to timely object to any actions by Respondents. 2.

Respondents state that Claimant, either expressly and/or by conduct, approved, authorized, participated in, and ratified the acts and transactions complained of and upon which recovery is sought, and is accordingly estopped or otherwise precluded from recovery herein under the doctrines of waiver, estoppel, and ratification. 3. Respondents state that Claimant's Statement of Claim, and each and every count therein, fails to state a claim upon which relief may be granted. 4. Respondents state that Claimant failed to properly mitigate his alleged damages and is therefore precluded from recovery. 5. Claimant received account statements and confirmation slips that apprised him of the activity in and the status of the subject account. If the activity failed to reflect his investment objectives, Claimant failed to inform Respondents. Accordingly, he is barred from recovery. 6. Respondents state that Claimant's alleged losses were proximately caused by his own acts, objectives or omissions, not by any wrongdoing on the part of Respondents. 7. Respondents state that Claimant has failed to allege any basis in fact or in law for any damages or fees as set forth in the statement of claim. 8. There is no contractual or statutory basis for an award of attorneys' fees even if Claimant were to prevail on the merits. 9. There is no private right of action under the NASD Rules. 10. Respondents state that since there were no underlying violations of any rule, regulation, law or other legal obligation, Claimant cannot sustain a failure to supervise claim. 11. To the extent that Claimant intended to include a churning claim Claimant has failed to provide any factual predicate to support the three elements to establish such a claim.

#### **RELIEF REQUESTED**

Claimant requested damages in excess of \$292,485.75, including commissions generated together with additional damages to be established at the hearing; pre-award and post-award interest; an amount to be determined by the Panel that Claimant would have received had his account been invested in suitable holdings at an annual rate of 6 %; rescission of all unsuitable transactions; costs and attorneys' fees; and such other and further relief as the Panel deems just and proper.

Respondents requested dismissal of the Statement of Claim in its entirety and support Respondent Cutrupi's request for an order of expungement removing any entries regarding this claim from Respondent Cutrupi's CRD.

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

Respondent Charron did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On or about February 1, 2005, NASD Dispute Resolution was notified that the Claimant withdrew his claims against Respondent Charron with prejudice.

On or about March 16, 2005, NASD Dispute Resolution was notified that this matter settled through mediation. During the mediation, it was discovered that the real basis of the claim for damages was Claimant's assertions regarding research issues and market conditions. It is noted that Claimant had invested in Global Crossing and WorldCom and had incurred significant investment losses. The Claimant conceded that his damages were not caused by improper or inappropriate conduct by the registered representative Robert J. Cutrupi. Therefore, Respondent Cutrupi has requested an order of expungement removing any entries regarding this claim from Mr. Cutrupi's CRD.

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 entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief.

1. Claimant's claims are dismissed in their entirety.
2. The Panel recommends the expungement of all references to the above captioned arbitration from Respondent Robert Cutrupi'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 Robert Cutrupi must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. Any and all relief not specifically addressed herein is denied.

### **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	= \$300.00
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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. In this matter, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. is a party.

Member Surcharge	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$5,200.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

January 31, 2005, February 1, 4, 2005, joint adjournment request = Waived

#### **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:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
<u>Pre-hearing conference: June 16, 2004 1 session</u>	
Total Forum Fees	= \$1,125.00

1. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Claimant has been assessed \$375.00 of the forum fees.
2. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Respondent Citigroup has been assessed \$375.00 of the forum fees.
3. In accordance with Rule 10306 of the NASD Code of Arbitration Procedure, Respondent Cutrupi has been assessed \$375.00 of the forum fees.

#### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 375.00</u>
Total Fees	= \$ 675.00
<u>Less payments</u>	<u>= \$1,425.00</u>
Refund Due Claimant	= \$ 750.00

2. Respondent Citigroup is solely liable for:

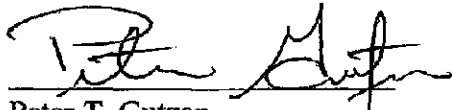
Member Fees	= \$5,200.00
<u>Forum Fees</u>	<u>= \$ 375.00</u>
Total Fees	= \$5,575.00
<u>Less payments</u>	<u>= \$5,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 375.00

3. Respondent Cutrupi is solely liable for:

<u>Forum Fees</u>	= \$ 375.00
<u>Total Fees</u>	= \$ 375.00
<u>Less payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution, Inc.</u>	= \$ 375.00

All balances are due and payable to NASD Dispute Resolution.

**Parties' Signatures**

  
Peter T. Gutzan  
Claimant

10 MAY 05  
Signature Date

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Citigroup Global Markets, Inc.  
f/k/a Salomon Smith Barney, Inc.  
Respondent

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Signature Date

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Robert J. Cutrupi  
Respondent

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Signature Date

**Parties' Signatures**

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Peter T. Gutzan  
Claimant

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Signature Date

*Citigroup Global Markets*  
Citigroup Global Markets, Inc. *by E. M. F. H.*  
f/k/a Salomon Smith Barney, Inc.  
Respondent

*5/9/05*  
Signature Date

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Robert J. Cutrupi  
Respondent

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Signature Date

**Parties' Signatures**

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Peter T. Gutzan  
Claimant

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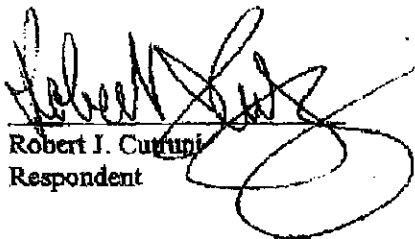
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Citigroup Global Markets, Inc.  
f/k/a Salomon Smith Barney, Inc.  
Respondent

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Signature Date



Robert J. Cuttini  
Respondent

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Signature Date



**ARBITRATION PANEL**

Carolyn A. Mann	-	Public Arbitrator, Presiding Chair
Alice E. Winkler, Esq.	-	Public Arbitrator
Clifford A. Harwick	-	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 which is my award.



Carolyn A. Mann  
Public Arbitrator, Presiding Chair

June 3, 2005  
Signature Date

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Alice E. Winkler, Esq.  
Public Arbitrator

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

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Clifford A. Harwick  
Non-Public Arbitrator

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Signature Date

June 6, 2005  
Date of Service (For NASD office use only)

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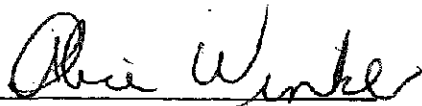
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Carolyn A. Mann  
Public Arbitrator, Presiding Chair

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Signature Date

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Alice E. Winkler, Esq.  
Public Arbitrator

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6/2/05  
Signature Date

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Clifford A. Harwick  
Non-Public Arbitrator

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Signature Date

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June 6, 2005  
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Carolyn A. Mann  
Public Arbitrator, Presiding Chair

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Signature Date

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Alice E. Winkler, Esq.  
Public Arbitrator

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Clifford A. Harwick  
Non-Public Arbitrator

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Signature Date

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