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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Lorraine A. Greenhill

Case Number: 04-00266

Names of the Respondents  
Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc.  
Jack B. Grubman

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Lorraine A. Greenhill, hereinafter referred to as "Claimant": William Young, Esq., Hooper & Weiss, LLC, Orlando, Florida.

For Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc. ("Citigroup") and Jack B. Grubman ("Grubman"), hereinafter collectively referred to as "Respondents": Jennifer Tomsen Esq., Greenberg Traurig, P.A., Orlando, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: January 15, 2004.

Claimant signed the Uniform Submission Agreement: April 3, 2003.

Statement of Answer filed by Respondents on or about: March 17, 2004.

Respondent Citigroup signed the Uniform Submission Agreement: March 10, 2004.

Respondent Grubman signed the Uniform Submission Agreement: March 3, 2004.

Memorandum in Response to Respondents' Submissions filed by Claimant on or about: September 22, 2004.

Respondents' Supplement and Reply to Claimant's Preliminary Response filed on or about: September 22, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: omission to state material facts and conflicts of interest in violation of Section 17(A) of the Securities Act of 1933; omission to state material facts and conflicts of interest in violation of Chapter 517.301 of the Florida Securities and Investor Protection Act; omission to state material facts and conflicts of interest in violation of NASD Rule 2210(d)(1), Communications with the Public-General Standards; breach of fiduciary duty; and, respondeat superior. The causes of action relate to Claimant's investment in WorldCom stock.

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

**RELIEF REQUESTED**

Claimant requested rescissory damages in the amount of \$26,485.00, punitive damages in the amount of \$3,000.00, interest, costs, attorneys' fees and such other relief as deemed appropriate by the Panel.

Respondents requested that Claimant's Statement of Claim be denied in its entirety, and dismissed with prejudice, with

attorneys' fees and costs assessed against Claimant.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

A significant issue on which the parties disagreed, and one which warrants mention, was whether Claimant was required, in order to prevail on a claim under Florida Statutes section 517.301, to prove reliance on any alleged material misstatement or omission by a Respondent. In the instant case, the primary allegation was that Respondents, in publishing analyses of WorldCom stock, failed to disclose material information related to their conflicts of interest as to the security in question. After careful review of the authorities cited by counsel, including *E.F. Hutton & Co. v. Rousseff*, 537 So.2d 978 (Fla. 1989) and *Waters v. International Precious Metals*, 172 F.R.D. 479 (S.D.Fl. 1996), the undersigned arbitrator concludes that Claimant is required to prove reliance to prevail under Florida Statutes section 517.301.

Florida Statutes section 517.301 provides, in pertinent part, as follows:

**517.301. Fraudulent transactions; falsification or concealment of facts**

(1) It is unlawful and a violation of the provisions of this chapter for a person:

(a) In connection with the rendering of any investment advice or in connection with the offer, sale, or purchase of any investment or security, including any security exempted under the provisions of s. 517.051 and including any security sold in a transaction exempted under the provisions of s. 517.061, directly or indirectly:

\* \* \*

2. To obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading.

In *E.F. Hutton*, the Florida Supreme Court determined that an alleged misstatement or omission need not be the cause of the loss for an investor to prevail. *E.F. Hutton* at 981. However, the court did NOT conclude that an investor could prevail without any showing that he or she would not have engaged in the transaction absent the misstatement or omission (so-called "transaction causation"). Indeed, the court is careful to specify that it is "proof of loss" causation which is not required. Further, in discussing Florida Statutes section 517.211, which provides the remedies for violations of section 517.301, the court states as follows:

[F.S. 517.211] appear[s] to be patterned after the common law contract cause of action termed rescission. Because of the limited scope of the parties, activities and remedies embraced by this common law cause of action, its requirements are far less restrictive than those of [the cause of action of] deceit. "The elements of rescission, in a nutshell, are 'misrepresentation' of a 'material' 'fact' on which the buyer justifiably 'relied.'" [citations omitted] (emphasis added)

At least one court has nonetheless cited the *E.F. Hutton* case en route to concluding that there is no requirement of reliance. Noting that the court in *E.F. Hutton* had found cases interpreting Section 12(2) of the Securities Act of 1933 as persuasive when applying Florida Statutes section 517.301, the United States District Court for the Southern District of Florida found "that there is no reason why a plaintiff proceeding under a 517.211 cause of

action for violations of 517.301 should be required to prove reliance.” *Waters v. International Precious Metals*, 172 F.R.D. 479,496 (S.D.Fla. 1996)

However, there is language in the Florida statute that is not the same as that in the federal statute. Florida Statutes section 517.301 applies where one “obtains money . . . **by means of** any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.” (Emphasis added.) In the ordinary case, for the statement or omission to be the “means of” obtaining money, Claimant or someone acting on Claimant’s behalf (in the instant matter, her husband) would have to rely on the statement.

In the instant case, the greater weight of the evidence strongly favors a finding that there was no reliance on Respondent Grubman’s statements by Claimant or by her husband, who essentially made her investment decisions for her. This alone is fatal to Claimant’s claims under Florida Statutes sections 517.211 and 517.301.

None of the foregoing should be read as an endorsement or approval of the acts and omissions of Respondents.

Claimant’s claims are denied in their entirety.

The parties’ requests for attorneys’ fees are denied.

Any and all claims for relief not specifically addressed herein, including Claimant’s claims for relief pursuant to Section 517.301 of the Florida Securities and Investor Protection Act and Claimant’s request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 150.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent Citigroup is a member firm and a party.

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,000.00</u>
Total Member Fees	= \$2,350.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested in this matter.

**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.

No three-day cancellation fees were assessed in this matter.

**Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Arbitrator.

Injunctive relief fees were not assessed in this matter.

**Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A 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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences:	
May 25, 2004	1 session
November 1, 2004	1 session

Two (2) Hearing sessions @ \$450.00/session	= \$ 900.00
Hearing Date:	
April 7, 2005	2 sessions

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Total Forum Fees	= \$1,800.00
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The Arbitrator has assessed forum fees of \$900.000 to Claimant.

The Arbitrator has assessed forum fees of \$900.00 to Respondents, jointly and severally.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 900.00
Total Fees	= \$1,050.00
Less Payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 450.00

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Respondent Citigroup is solely liable for:

<u>Member Fees</u>	= \$2,350.00
<u>Total Fees</u>	= \$2,350.00
<u>Less Payments</u>	= \$2,350.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 900.00
<u>Total Fees</u>	= \$ 900.00
<u>Less Payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 900.00

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

**ARBITRATOR**

Will Murphy, Esq.

- Public Arbitrator, Presiding Chairperson

**Arbitrator's Signature**

/s/  
Will Murphy, Esq.  
Public Arbitrator, Presiding Chairperson

April 14, 2005  
Signature Date

April 14, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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Respondent Citigroup is solely liable for:

<u>Member Fees</u>	= \$2,350.00
<u>Total Fees</u>	= \$2,350.00
<u>Less Payments</u>	= \$2,350.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondents are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 900.00
<u>Total Fees</u>	= \$ 900.00
<u>Less Payments</u>	= \$ 0.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 900.00

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

ARBITRATOR

Will Murphy, Esq.

Public Arbitrator, Presiding Chairperson

Arbitrator's Signature



Will Murphy, Esq.  
Public Arbitrator, Presiding Chairperson

14 April 2005  
Signature Date

Date of Service (For NASD Dispute Resolution office use only)