

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

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-01004

Charles S. Martin, Jr.

Names of the Respondents

Hearing Site: Charlotte, North Carolina

Citigroup Global Markets, Inc.  
f/k/a Salomon Smith Barney, Inc. and  
Michael Patrick Spolar

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

**REPRESENTATION OF PARTIES**

Claimant, Charles S. Martin, Jr., hereinafter referred to as "Claimant", was represented by Staten L. Wilcox, Esq., Karney Debrun & Wilcox, Charlotte, North Carolina.

Respondents, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. ("Citigroup") and Michael Patrick Spolar ("Spolar"), hereinafter collectively referred to as "Respondents", were represented by Sara W. Higgins, Esq., Kennedy Covington Lobdell & Hickman, LLP, Charlotte, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on February 12, 2004.

Claimant signed the Uniform Submission Agreement on February 3, 2004.

Statement of Answer filed by Respondents on May 3, 2004.

A representative of Respondent Citigroup executed the Uniform Submission Agreement on June 29, 2004.

Respondent Spolar signed the Uniform Submission Agreement on June 30, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: unsuitability, breach of fiduciary duty, *respondeat superior*, and violation of NASD Conduct Rule IM-2310. The causes of action related to the purchase and sale of various unspecified securities.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: ratification, waiver, estoppel, failure to state a claim, and failure to mitigate. Respondents maintained that Respondent Spolar recommended suitable investments and did not breach any applicable duty.

### RELIEF REQUESTED

Claimant in his Statement of Claim requested compensatory damages in the amount of \$574,251.91, plus interest, attorneys' fees and costs.

Respondents in their Statement of Answer requested dismissal of the Statement of Claim in its entirety.

### OTHER ISSUES CONSIDERED AND DECIDED

The parties have entered into a confidential settlement agreement pursuant to which the parties have stipulated to dismiss this proceeding and to jointly request that the references to this proceeding be expunged from the NASD Central Registration Depository ("CRD") records of Respondent Spolar (CRD #2192992). The parties submitted a stipulated award to be considered by the Panel. The Panel requested a telephonic hearing to hear argument on the issue of expungement.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are dismissed with prejudice pursuant to a confidential settlement between the parties;
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Spolar'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 Spolar must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive;
3. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and
4. Any and all relief not specifically addressed herein is denied in its entirety.

### 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 = \$ 375.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Citigroup is a party.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00
Total Member Fees	= \$7,000.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

July 19-21, 2005, adjournment requested by the parties = \$1,200.00

1. The Panel has assessed \$600.00 of the adjournment fees to Claimant.
2. The Panel has assessed \$600.00 of the adjournment fees jointly and severally to Respondents.

Forum Fees and Assessments

The Panel 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:

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$1,200.00  
Pre-hearing conference: October 6, 2004 1 session

One (1) Hearing session @ \$1,200.00 = \$1,200.00  
Hearing Date: April 17, 2006 1 session

Total Forum Fees = \$2,400.00

1. The Panel has assessed \$600.00 of the forum fees to Claimant.
2. The Panel has assessed \$1,800.00 of the forum fees jointly and severally to Respondents.

EEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 600.00
Total Fees	= \$1,575.00
Less payments	= \$1,575.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Citigroup is assessed and shall pay the following fees:

Member Fees	= \$7,000.00
Total Fees	= \$7,000.00

<u>Less payments</u>	<u>= \$7,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

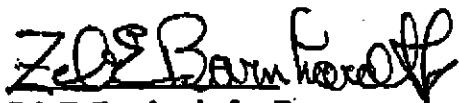
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	<u>= \$1,800.00</u>
Total Fees	= \$2,400.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$2,400.00

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

ARBITRATION PANEL

Zeb E. Barnhardt, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Glenn A. Clinefelter	-	Public Arbitrator, Panelist
James Hugh Williams	-	Non-Public Arbitrator, Panelist

Concurring Arbitrators' Signatures



Zeb E. Barnhardt, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

4/17/06

Signature Date

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Glenn A. Clinefelter  
Public Arbitrator, Panelist

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Signature Date

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James Hugh Williams  
Non-Public Arbitrator, Panelist

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Signature Date

April 18 2006

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

Concurring Arbitrators' Signatures

Zeb E. Barnhardt, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Benjamin F. Richards, Jr.

Benjamin F. Richards, Jr.  
Public Arbitrator, Panelist

4/18/2006  
Signature Date

Calvin D. Ceva  
Non-Public Arbitrator, Panelist

Signature Date

April 18 2006  
Date of Service (For NASD Dispute Resolution office use only)

Concerning Arbitrators' Signatures

Zeb E. Barnhardt, Jr., Esq.  
Public Arbitrator, Presiding Chairperson

Signature: Date

Glenn A. Clinefelter  
Public Arbitrator, Panelist

Signature: Date

James Hugh Williams  
Non-Public Arbitrator, Panelist

4/18/2006  
Signature: Date

April 18, 2006  
Date of Service (For NASD Dispute Resolution office use only)