

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

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In the Matter of the Arbitration Between:

Francine J. Giulekas, Gus Giulekas, and Gus and Francine J. Giulekas (Claimants) v. Merrill Lynch Pierce Fenner and Smith, James D. Tomlin, James Williams of the Williams/Tomlin GRP, Salomon Smith Barney Inc. n/k/a Citigroup Global Markets, Inc., Robert A. Perconte, Elizabeth Polizzi, William Robert Agresti, and John/Jane Does 1-10

Case Number: 04-01063

Hearing Site: New York City, New York

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

**REPRESENTATION OF PARTIES**

Claimants, Francine J. Giulekas ("F. Giulekas"), Gus Giulekas ("G. Giulekas"), Gus and Francine J. Giulekas ("G. and F. Giulekas") hereinafter collectively referred to as "Claimants": Martin J. Gofberg, Esq., Equitable Solutions=Quality, Malverne, NY.

Respondents Salomon Smith Barney Inc. n/k/a Citigroup Global Markets, Inc., ("Salomon"), Robert A. Perconte ("Perconte"), Elizabeth Polizzi (Polizzi"), and William Robert Agresti ("Agresti"): Jonathan C. Thau, Esq., Luboja & Thau, LLP, New York, NY.

Respondents Merrill Lynch Pierce Fenner and Smith ("Merrill"), James D. Tomlin ("Tomlin"), and James Williams of the Williams/Tomlin GRP, ("Williams"): Victor A. Machcinski Jr., Esq., Krebsbach & Snyder P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 17, 2004.

Claimants signed the Uniform Submission Agreement: January 25, 2004.

Joint Statement of Answer filed by Respondents Merrill and Tomlin on or about: May 3, 2004.  
Respondent Williams did not file a Statement of Answer or submit a Uniform Submission Agreement.

Respondent Merrill did not submit a signed Uniform Submission Agreement.

Respondent Tomlin did not submit a signed Uniform Submission Agreement.

Joint Statement of Answer filed by Respondents Salomon, Perconte, Agresti, and Polizzi on or about: April 30, 2004.

Respondent Salomon did not submit a signed Uniform Submission Agreement.

Respondent Perconte signed the Uniform Submission Agreement: May 3, 2004.

Respondent Agresti signed the Uniform Submission Agreement: May 3, 2004.  
Respondent Polizzi signed the Uniform Submission Agreement: May 3, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: violation of industry rules, breach of fiduciary obligation, fraud, misrepresentation, negligence, failure to supervise, and substantial breakdown of compliance function. The causes of action relate to municipal bonds.

Unless specifically admitted in its Answer, Respondents Merrill, Tomlin, Salomon, Perconte, Agresti, and Polizzi denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested: \$1,000,000.00 in compensatory damages, the return of all commission fees, pre-judgment interest at the rate of 12%, \$1,000,000.00 in punitive damages, and any other additional relief the Panel deems appropriate and necessary.

Respondents Merrill and Tomlin requested that the Statement of Claim be dismissed in its entirety, assess all costs and form fees against Claimants and order the expungement of Respondent Tomlin's CRD record.

Respondents Salomon, Perconte, Agresti, and Polizzi requested that the Panel dismiss the Statement of Claim in its entirety.

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

Respondents Merrill, Tomlin, and Salomon did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

On or about April 27, 2005, Claimants withdrew their claims against Respondents Tomlin and Williams.

On or about June 28, 2005, Claimants entered into a settlement agreement with Respondent Merrill and withdrew their claims with prejudice against said Respondent.

At the hearings, Claimants made an oral amendment to the pleadings and deleted any references to margin accounts in the Statement of Claim.

At the hearings, Claimant withdrew their claims against Respondents Polizzi and Agresti.

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

### **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. Claimants' claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondents Robert A. Peconte, William Robert Agresti, and Elizabeth Polizzi'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, Respondents Robert A. Peconte, William Robert Agresti and Elizabeth Polizzi 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, including punitive damages 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	= \$ 500.00
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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 firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Merrill and Salomon are parties.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

May 2-6, 2005 adjournment	= \$ 1,200.00
Panel assessed fee to Claimants	

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

The Panel has assessed forum fees for each session conducted. A 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. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,200.00	= \$ 1,200.00
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Pre-hearing conference: September 27, 2005 1 session

Six (6) Hearing sessions @ \$1,200.00 = \$ 7,200.00

Hearing Dates: July 20, 2005 2 sessions  
July 21, 2005 2 sessions  
July 22, 2005 2 sessions

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Total Forum Fees = \$ 8,400.00

1. The Panel has assessed \$ 4,200.00 of the forum fees to Claimants jointly and severally.
2. The Panel has assessed \$ 4,200.00 of the forum fees to Respondents jointly and severally.

**Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$ 4,200.00</u>
Total Fees	= \$ 5,900.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 5,900.00

2. Respondent Merrill is solely liable for:

<u>Member Fees</u>	<u>= \$ 8,550.00</u>
Total Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent Salomon is solely liable for

<u>Member Fees</u>	<u>= \$ 8,550.00</u>
Total Fees	= \$ 8,550.00
<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

4. Respondents Salomon, Perconte, Agresti and Polizzi are jointly and severally liable for:

<u>Forum Fees</u>	<u>= \$ 4,200.00</u>
Total Fees	= \$ 4,200.00
<u>Less payments</u>	<u>= \$ 4,200.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

**ARBITRATION PANEL**

Donna N. Saleh	-	Public Arbitrator, Presiding Chairperson
Ilene Englemayer	-	Public Arbitrator
Herbert R. Behrens	-	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.



Donna N. Saleh  
Public Arbitrator, Presiding Chairperson

7/29/05  
Signature Date

\_\_\_\_\_  
Ilene Englemayer  
Public Arbitrator

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

\_\_\_\_\_  
Herbert R. Behrens  
Non-Public Arbitrator

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Signature Date

August 9, 2005

Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Donna N. Saleh  
Ilene Englemayer  
Herbert R. Behrens

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

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Donna N. Saleh  
Public Arbitrator, Presiding Chairperson

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

Ilene Englemayer  
Ilene Englemayer  
Public Arbitrator

Aug. 8, 2005  
Signature Date

\_\_\_\_\_  
Herbert R. Behrens  
Non-Public Arbitrator

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

August 9, 2005  
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Donna N. Saleh	-	Public Arbitrator, Presiding Chairperson
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Concurring Arbitrators' Signatures

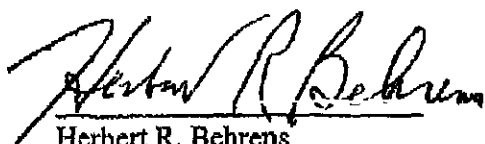
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Donna N. Saleh  
Public Arbitrator, Presiding Chairperson

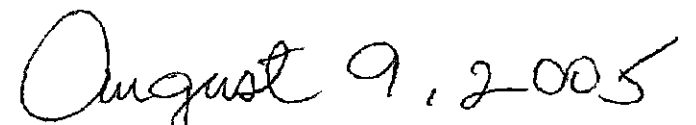
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