

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

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In the Matter of the Arbitration Between:

Melvin I. Friedman, individually, and Melvin I. Friedman and Joan L. Friedman as Trustees of the Friedman Family Trust Dated 12/10/98, Claimants v. Salomon Smith Barney n/k/a Citigroup Global Markets, Inc., Stephen G. Rothschild, and Daniel G. Rothschild, Respondents

Case Number: 04-01409

Hearing Site: San Diego, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

William S. Bonnheim, Esq.  
William S. Bonnheim, PLC  
Palm Desert, California

For Respondents:

Terry Ross, Esq.  
Keesal, Young & Logan  
Long Beach, California

**CASE INFORMATION**

Statement of Claim filed: on or about March 2, 2004

Claimants' Joint Uniform Submission Agreement signed: February 24, 2004

Joint Statement of Answer filed by Respondents: June 9, 2004

Joint Amended Statement of Answer filed by Respondents: June 10, 2004

Respondent Salomon Smith Barney n/k/a Citigroup Global Markets, Inc.'s Uniform Submission Agreement signed: November 30, 2005

Respondent Stephen G. Rothschild's Uniform Submission Agreement signed: August 18, 2004

Respondent Daniel G. Rothschild's Uniform Submission Agreement signed: August 18, 2004

### **CASE SUMMARY**

Claimants alleged breach of fiduciary duty, failure to supervise, violation of federal and state securities laws, NASD Rules of Fair Practice and NYSE Rules, elder abuse, and unfair and deceptive practices against senior citizens. The dispute involved, but was not limited to, the Guided Portfolio Management program.

Unless specifically admitted in its Answers, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested general and compensatory damages in the amount of \$624,594.00, all profits generated from the Accounts, lost opportunity costs, costs of proceedings, pre-judgment interest at the legal rate, costs, and attorney's fees pursuant to statute.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety.

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

On April 7, 2004, Claimants and Claimants' counsel signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On July 11, 2005, NASD Dispute Resolution received notice that Claimants dismissed Respondents Stephen G. Rothschild and Daniel G. Rothschild.

At the commencement of the evidentiary hearing, the Chairperson requested that Respondent Salomon Smith Barney n/k/a Citigroup Global Markets, Inc. to file a properly executed Uniform Submission Agreement.

At the evidentiary hearing, Claimants brought a motion to reopen discovery. Based on testimony at the hearing, Claimants moved to have Respondent provide additional compliance materials and to allow testimony about these materials by two witnesses previously excused and Claimants' expert yet to testify.

Respondent, while maintaining it had produced everything, was willing to provide anything additional limited to a particular program product. Respondent objected, however, to additional testimony about any such material as might be produced and expressed concern about Claimants' expert possibly being allowed to testify regarding such material.

Ultimately, as Respondent was willing to supply the material, if any, the Panel ordered Respondent to do so on or before Monday, December 12, 2005. If no material was found, Respondent was to provide executed certification that search was made and nothing responsive found. The issue of testimony regarding any material as may be produced was reserved for December 21, 2005, being the next hearing date.

On December 21, 2005, at the commencement of the hearing day, Respondent represented that four or five versions of compliance material relating to the product were found and timely produced to Claimants by Respondent, together with a "model portfolio" document relevant to the product. In light of this development, the Panel heard argument as to the need for witness testimony regarding the materials.

After deliberation, the Panel asked to see the material in order to determine the necessity and source of testimony. For the Panel's review in deliberations, Claimants' counsel provided one version of the compliance material, stating that it was one of the two that they felt were relevant, and no "model portfolio" document. The Panel entertained additional argument at this time.

After review of the compliance document, the parties' respective arguments and additional deliberation, the Panel determined that testimony previously given by the then-branch manager and two account representatives was sufficient given Claimants' needs as outlined in argument by their counsel, and that Claimants could make all references to the materials in closing. Additionally, Claimants' expert, assuming his expertise included such matters, could compare and contrast the subject portfolio to the "model portfolio" document. Claimants' counsel verbally accepted the ruling.

Claimants' expert did not qualify to testify as to matters regarding portfolio or account management, supervision, damage calculation, suitability, or compliance issues due to time out of the industry and lack of established and effective measures to otherwise keep current in areas of proffered expertise. Claimants' expert did qualify to testify as to performance of the portfolio, in whole or in part, relative to the market's performance based on whatever indices he was prepared to discuss.

When Claimants' counsel realized that this ruling meant there would be no additional testimony from past witnesses or testimony from their expert as to compliance material or the "model portfolio" document, he expressed dismay together with the opinion that the Panel's ruling with regard to the newly produced materials was inconsistent. The Chair responded, to the effect, that

the rulings were not inconsistent and that, too, Claimants could make all reference in closing to the materials as a whole, both compliance and "model portfolio."

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**

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

- 1) Claimants' claims are denied in their entirety.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) All other relief requested and not expressly granted is denied.

### **FEES**

Pursuant to the *Code of Arbitration Procedure* ("Code"), the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 375.00
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#### **Member Fees**

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Salomon Smith Barney n/k/a Citigroup Global Markets, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 4,000.00
<b>Total Member Fees</b>	<b>= \$ 7,000.00</b>

#### **Adjournment Fees**

The following adjournment fees are assessed:

July 12 – 15, 2005, adjournment requested by Claimants	= \$ 1,200.00
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The Panel assessed \$1,200.00 of the adjournment fee jointly and severally 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 conference session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: May 25, 2005 1 session

Two (2) Pre-hearing conference sessions with the Panel @ \$1,200.00/session = \$ 2,400.00  
Pre-hearing conferences: July 30, 2004 1 session  
July 1, 2005 1 session

Nine (9) Hearing sessions @ \$1,200.00/session = \$10,800.00  
Hearings: November 30, 2005 2 sessions  
December 1, 2005 2 sessions  
December 2, 2005 2 sessions  
December 21, 2005 2 sessions  
December 22, 2005 1 session

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**Total Forum Fees = \$13,650.00**

1. The Panel assessed \$2,250.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$600.00 of the forum fees jointly and severally to Respondents Salomon Smith Barney n/k/a Citigroup Global Markets, Inc., Stephen G. Rotchschild, and Daniel G. Rothschild.
3. The Panel assessed \$10,800.00 of the forum fees to Respondent Salomon Smith Barney n/k/a Citigroup Global Markets, Inc.

**Fee Summary**

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 1,200.00
<u>Forum Fees</u>	<u>= \$ 2,250.00</u>
Total Fees	= \$ 3,825.00
<u>Less payments</u>	<u>= \$(1,575.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,250.00</b>

2. Respondents Salomon Smith Barney n/k/a Citigroup Global Markets, Inc., Stephen G. Rothschild, and Daniel G. Rothschild are charged jointly and severally with the following fees and costs:

<u>Forum Fees</u>	<u>= \$ 600.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 600.00</b>

3. Respondent Salomon Smith Barney n/k/a Citigroup Global Markets, Inc. is charged with the following fees and costs:

Forum Fees	= \$10,800.00
<u>Member Fees</u>	<u>= \$ 7,000.00</u>
Total Fees	= \$17,800.00
<u>Less payments</u>	<u>= \$( 7,000.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$10,800.00</b>

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

ARBITRATION PANEL

Suzanne Viau Chamberlain	-	Public Arbitrator, Presiding Chair
George Hubner	-	Public Arbitrator
J. A. Dutcher, CPA	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

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Suzanne Viau Chamberlain  
Chair, Public Arbitrator

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Signature Date

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George Hubner  
Public Arbitrator

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Signature Date

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J. A. Dutcher, CPA  
Non-Public Arbitrator

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1/16/06  
Signature Date

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1/17/06  
Date of Service

ARBITRATION PANEL

Suzanne Viau Chamberlain

- Public Arbitrator, Presiding Chair

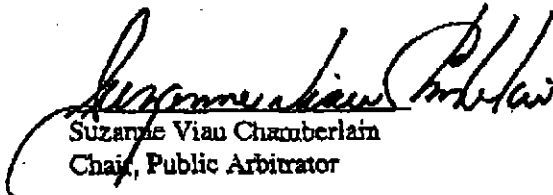
George Hubner

- Public Arbitrator

J. A. Dutcher, CPA

- Non-Public Arbitrator

Concurring Arbitrators' Signatures

  
Suzanne Viau Chamberlain  
Chair, Public Arbitrator

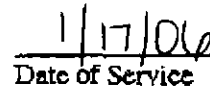
  
Signature Date

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George Hubner  
Public Arbitrator

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George Hubner	-	Public Arbitrator
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**Concurring Arbitrators' Signatures**

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Suzanne Viau Chamberlain  
Chair, Public Arbitrator

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Signature Date

  
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George Hubner  
Public Arbitrator

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Signature Date

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J. A. Dutcher, CPA  
Non-Public Arbitrator

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Signature Date

1/17/06  
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Date of Service