

**AWARD**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between

Name of Claimant

Debra M. Bacon

and

Case Number: 04-01917  
Hearing Site: Houston, Texas

Name of Respondent / Third Party Claimant

Citigroup Global Markets, Inc.

and

Names of Third Party Respondents

Randall W. Bacon, and  
Allison & Drew, Inc.

---

**NATURE OF DISPUTE**

Customer v. Member Firm v. Customer and Non-Member

**REPRESENTATION OF PARTIES**

Debra M. Bacon ("**Claimant**") was represented by Daniel R. Kirshbaum, Esq., Axelrod, Smith & Kirshbaum, Houston, Texas.

Citigroup Global Markets, Inc. ("**Citigroup**") was represented by Andrew R. Harvin, Esq., Doyle, Restrepo, Harvin & Robbins, LLP, Houston, Texas

Randall W. Bacon ("**R. Bacon**") did not file a Statement of Answer to the Third Party Claim, however did appear and testified at the final hearing.

Allison & Drew, Inc. ("**Allison & Drew**") did not appear.

**CASE INFORMATION**

The Statement of Claim was filed on or about March 22, 2004. The Submission Agreement of Claimant, Debra M. Bacon, was signed on or about March 22, 2004. On or

about May 25, 2005, Claimant filed a Response to Citigroup's Motion for Leave to Join Randall W. Bacon and Allison & Drew, Inc. as Third Party Respondents.

The Statement of Answer was filed by Respondent, Citigroup Global Markets, Inc., on or about May 14, 2004. The Submission Agreement of Respondent, Citigroup Global Markets, Inc., was signed on or about May 12, 2004. On or about May 5, 2005, Citigroup filed a Motion for Leave to Join Randall W. Bacon and Allison & Drew, Inc. as Third Party Respondents. Citigroup filed a Motion to Dismiss on or about April 22, 2005. On or about June 14, 2005, Citigroup filed a Supplement to their Motions to Dismiss and Leave to Join. Citigroup filed a Motion to Judgment on or about September 16, 2005.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, omission of facts, misrepresentation, breach of contract, negligence and failure to supervise. The causes of action related to the four (4) of Claimant's IRA retirement accounts. Claimant alleged that numerous conversions were effected in her accounts by her then husband Randall Bacon. Claimant alleged that these accounts were her sole and separate property and Randall Bacon had no interest whatsoever. Claimant alleged that the gross lack of supervision by Citigroup and its management was negligent, reckless and/or intentional.

Unless specifically admitted in its Answer, Respondent Citigroup denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant failed to state a claim upon which relief can be granted; Claimant's claims should be barred pursuant to the Texas Business and Commerce Code; and Claimant failed to mitigate her damages.

Citigroup asserted the following causes of action in its Third Party Claim: fraud, gross negligence, breach of contract, tortious interference, promissory and equitable estoppel, and indemnification. Citigroup alleged Claimant failed to sue Randall Bacon, her delay tactics related to discovery were designed to shield Randall Bacon from liability, to shift responsibility to Citigroup and to conceal important facts surrounding the use of Claimant's funds from the Panel.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$537,613.00
Punitive/Exemplary Damages	Unspecified
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified

**Other Monetary Relief**

**Unspecified**

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees. In its Third Party Claim, Citigroup requested an award in the amount of:

Actual/Compensatory Damages	\$537,613.00
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

**OTHER ISSUES CONSIDERED & DECIDED**

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondents, Randall W. Bacon and Allison & Drew, Inc., have been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondents, Randall W. Bacon and Allison & Drew, Inc., had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

On or about June 21, 2005, the Panel denied Citigroup's Motion to Dismiss and granted Citigroup's Motion for Leave to Join Randall W. Bacon and Allison & Drew, Inc. as Third Party Respondents. In addition, the Panel granted the parties' request to postpone the hearing.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

**AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondent, Citigroup Global Markets, Inc., is liable for and shall pay to Claimant, Debra M. Bacon, the sum of \$218,000.00 in compensatory damages;
- 2.) Respondent, Citigroup Global Markets, Inc., is liable for and shall pay to

Claimant, Debra M. Bacon, the sum of \$38,000.00 in attorneys' fees;

- 3.) The Third Party Claim of Respondent, Citigroup Global Markets, Inc., is dismissed without prejudice;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 5.) Any relief not specifically enumerated, including punitive damages, is hereby denied with prejudice.

### **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
Third Party Claim filing fee	= \$ 1,250.00

#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Citigroup Global Markets, Inc.

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

#### **Adjournment Fees**

Adjournments granted during these proceedings:

May 3-5, 2005, adjournment requested by Citigroup	= \$ 1,200.00
July 12-14, 2005, adjournment requested jointly by the parties	= \$ 1,200.00

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

The Arbitration 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. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with Panel x \$1,200.00		= \$ 2,400.00
Pre-hearing conferences: July 28, 2004	1 session	
June 20, 2005	1 session	
Six (6) Hearing sessions x \$1,200.00		= \$ 7,200.00
Hearing Dates: September 19, 2005	2 sessions	
September 20, 2005	2 sessions	
September 21, 2005	2 sessions	
Total Forum Fees		= \$ 9,600.00

The Arbitration Panel has assessed \$9,600.00 of the forum fees to Citigroup Global Markets, Inc.

#### Fee Summary

Claimant, Debra M. Bacon, is liable for:

Initial Filing Fee	= \$ 375.00
Adjournment Fee	= \$ 600.00
Total Fees	= \$ 975.00
Less payments	= \$ 1,575.00
Refund Due to Claimant	= \$ 600.00

Respondent, Citigroup Global Markets, Inc., is liable for:

Third Party Claim Filing Fee	= \$ 1,250.00
Member Fees	= \$ 7,000.00
Adjournment Fee	= \$ 1,800.00
Forum Fees	= \$ 9,600.00
Total Fees	= \$19,650.00
Less payments	= \$ 9,200.00
Balance Due NASD Dispute Resolution	= \$10,450.00

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

**ARBITRATION PANEL**

Henry R. Barracano - Public Arbitrator, Presiding Chair  
Frank B. Fugate - Public Arbitrator  
Dolores Martin - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Henry R. Barracano  
Henry R. Barracano  
Public Arbitrator, Presiding Chair

October 13, 2005  
Signature Date

/s/ Frank B. Fugate  
Frank B. Fugate  
Public Arbitrator

October 13, 2005  
Signature Date

/s/ Dolores Martin  
Dolores Martin  
Non-Public Arbitrator

October 13, 2005  
Signature Date

October 13, 2005  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Henry R. Barracano - Public Arbitrator, Presiding Chair  
Frank B. Fugate - Public Arbitrator  
Dolores Martin - Non-Public Arbitrator

Concurring Arbitrators:

  
Henry R. Barracano  
Public Arbitrator, Presiding Chair

13 October 2008  
Signature Date

\_\_\_\_\_  
Frank B. Fugate  
Public Arbitrator

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

\_\_\_\_\_  
Dolores Martin  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Henry R. Barracano - Public Arbitrator, Presiding Chair  
Frank B. Fugate - Public Arbitrator  
Dolores Martin - Non-Public Arbitrator

Concurring Arbitrators:

Henry R. Barracano  
Public Arbitrator, Presiding Chair 10

*Frank B. Fugate* 13  
Frank B. Fugate 05  
Public Arbitrator

Dolores Martin  
Non-Public Arbitrator

Date of Service (For NASD office use only)

Signature Date

Signature Date

Signature Date



**ARBITRATION PANEL**

Henry R. Barracano - Public Arbitrator, Presiding Chair  
Frank B. Fugate - Public Arbitrator  
Dolores Martin - Non-Public Arbitrator

Concurring Arbitrators:

Henry R. Barracano  
Public Arbitrator, Presiding Chair

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

Frank B. Fugate  
Public Arbitrator

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

*Dolores Martin*  
Dolores Martin  
Non-Public Arbitrator

*10-13-05*  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)