

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Citigroup Global Markets, Inc., Claimant v. Randall Jay Clark, Respondent

Randall Jay Clark, Counter-Claimant v. Citigroup Global Markets, Inc., Counter-Respondent

Case Number: 04-02349

Hearing Site: San Diego, California

Nature of the Dispute: Member v. Associated Person
Associated Person v. Member

REPRESENTATION OF PARTIES

For Claimant/Counter-Respondent

Citigroup Global Markets, Inc.

(hereinafter Citigroup Global Markets, Inc.):

Glen R. Mozingo, Esq.
Kinnery Patel, Esq.
The Mozingo Law Firm
Newport Beach, California

For Respondent/Counter-Claimant

Randall Jay Clark (hereinafter Randall Jay Clark):

Randall Jay Clark
In Propria Persona
San Diego, California

CASE INFORMATION

Statement of Claim filed: March 30, 2004

Citigroup Global Markets, Inc.'s Uniform Submission Agreement signed: undated

Citigroup Global Markets, Inc.'s Reply to Counterclaim filed: August 19, 2004

Statement of Answer and Counterclaim filed by Randall Jay Clark: August 10, 2004

CASE SUMMARY

In its Statement of Claim, Citigroup Global Markets, Inc. alleged breach of a Promissory Note.

Unless specifically admitted in its Statement of Answer, Randall Jay Clark denied the allegations made in the Statement of Claim and asserted affirmative defenses.

In his Counterclaim, Randall Jay Clark alleged harassment and creation of a hostile work environment.

Unless specifically admitted in its Reply to the Counterclaim, Citigroup Global Markets, Inc. denied the allegations made in the Counterclaim and asserted affirmative defenses.

RELIEF REQUESTED

In its Statement of Claim, Citigroup Global Markets, Inc. requested compensatory damages in the amount of \$249,285.60 plus 10% interest beginning April 15, 2002, and costs, including attorney's fees.

In his Statement of Answer to the Statement of Claim, Randall Jay Clark requested dismissal of Citigroup Global Markets, Inc.'s Statement of Claim in its entirety.

In his Counterclaim, Randall Jay Clark requested compensatory damages in the amount of \$825,000.00.

In its Reply to the Counterclaim, Citigroup Global Markets, Inc. requested compensatory damages in the amount of \$249,285.60 plus 10% interest beginning April 15, 2002, and costs, including attorney's fees.

OTHER ISSUES CONSIDERED AND DECIDED

On April 27, 2004, Citigroup Global Markets, Inc. and its 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.

On November 18, 2004, Randall Jay Clark 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.

Randall Jay Clark did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

On March 17, 2005, Citigroup Global Markets, Inc. filed a Motion for Summary Judgment. Randall Jay Clark did not file a response to Citigroup Global Markets, Inc.'s Motion for Summary Judgment. On May 31, 2005, the Panel conducted a pre-hearing conference to hear oral argument on the motion. After due deliberation, on June 7, 2005, the Panel issued an Order granting Citigroup Global Markets, Inc.'s Motion for Summary Judgment.

At the hearing on November 28, 2005, Citigroup Global Markets, Inc. made a motion to preclude Randall Jay Clark from introducing evidence because of a failure to respond to discovery requests. The panel denied the motion.

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, evidence presented at the hearing, and the post-hearing submissions, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Randall Jay Clark is liable to and shall pay Citigroup Global Markets, Inc. \$189,457.06 in compensatory damages.
- 2) Randall Jay Clark is liable to and shall pay Citigroup Global Markets, Inc. simple interest on the sum of \$189,457.06 at the rate of 10% per annum from March 19, 2004 until the date the Award is paid in full.
- 3) Randall Jay Clark is liable to and shall pay Citigroup Global Markets, Inc. \$26,244.25 in attorney's fees, pursuant to the terms of the Promissory Note Forgivable Loan Agreement.
- 4) Randall Jay Clark is liable to and shall pay Citigroup Global Markets, Inc. \$9,101.30 in costs.
- 5) Randall Jay Clark's Counterclaim denied on Motion for Summary Judgment.
- 6) Except as awarded above, the parties shall bear their respective costs, including attorney's fees.
- 7) 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	= \$ 1,000.00
Counterclaim filing fee	= \$ 375.00

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 Citigroup Global Markets, Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 4,000.00</u>
Total Member Fees	= \$ 6,450.00

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:

(3) Pre-hearing conference sessions with the Panel @ \$1,200.00/session	= \$ 3,600.00
Pre-hearing conferences:	
February 18, 2005	1 session
February 25, 2005	1 session
May 31, 2005	1 session
(2) Hearing sessions @ \$1,200.00/session	= \$ 2,400.00
Hearing:	
November 28, 2005	2 sessions
Total Forum Fees	= \$ 6,000.00

1. The Panel assessed \$5,400.00 of the forum fees to Randall Jay Clark.
2. The Panel waived \$600.00 of the forum fees.

Fee Summary

1. Citigroup Global Markets, Inc. is charged with the following fees and costs:

Initial Filing Fee	= \$ 1,000.00
Member Fees	= \$ 6,450.00
Total Fees	= \$ 7,450.00
Less payments	= \$(8,575.00)
Refund Due Citigroup Global Markets, Inc.	= \$(1,125.00)

2. Randall Jay Clark is charged with the following fees and costs:

Counterclaim Filing Fee	= \$ 375.00
Forum Fees	= \$ 5,400.00
Total Fees	= \$ 5,775.00
Less payments	= \$(1,575.00)
Balance Due NASD Dispute Resolution	= \$ 4,200.00

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

Robert F. Ames	-	Public Arbitrator, Presiding Chair
L. William McGrath, Jr.	-	Public Arbitrator
James F. Schmidt	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert F. Ames
Chair, Public Arbitrator

Signature Date

L. William McGrath, Jr.
Public Arbitrator

Signature Date

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Non-Public Arbitrator

Signature Date

Date of Service

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12/8/05
Signature Date

L. William McGrath, Jr.
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Signature Date

James F. Schmidt
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Signature Date

December 9, 2005
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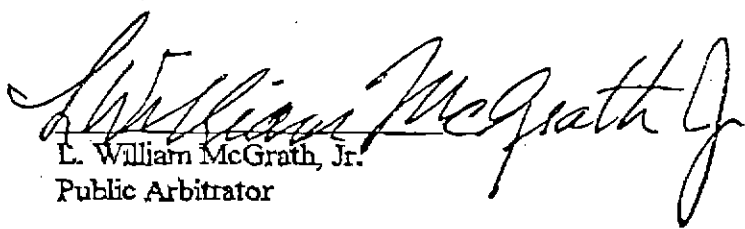
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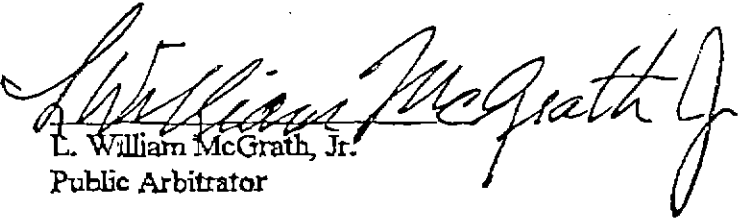
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