

---

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

---

In the Matter of the Arbitration Between:

Names of the Claimants

Joseph W. Berlinger  
Elissa K. Berlinger

Case Number: 04-03083

Name of the Respondent

Salomon Smith Barney

Hearing Site: Boca Raton, Florida

---

Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Joseph W. Berlinger and Elissa K. Berlinger, hereinafter collectively referred to as "Claimants", appeared pro-se.

For Salomon Smith Barney, hereinafter referred to as "Respondent": Neil B. Solomon, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: April 27, 2004.

Claimants signed the Uniform Submission Agreements: April 23, 2004.

Statement of Answer filed by Respondent on or about: June 24, 2004.

Respondent signed the Uniform Submission Agreement: June 14, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty; fraud; and, misrepresentation/omission of fact. The causes of action relate to the purchase in Claimants' accounts of various common stocks, including, but not limited to, the following: WorldCom/MCI; Genuity, Inc.; and, Targets Tr VIII.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various defenses.

**RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$57,871.50, lost interest/dividends in the amount of \$3,640.00, and punitive damages in the amount of \$10,000.00.

Respondent requested that Claimants' claim be denied in its entirety.

**OTHER ISSUES CONSIDERED AND DECIDED**

At the close of Claimants' case in chief, Respondent moved to dismiss Claimants' WorldCom claims, asserting that Claimants did not present sufficient evidence to prove their case as it relates to WorldCom, Inc., to which Claimants

objected. The Panel denied Respondent's 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, the testimony and evidence presented at the hearing, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable on the claim for breach of fiduciary duty and shall pay to Claimants compensatory damages in the amount of \$12,000.00, plus interest at the rate of 7% accruing from April 27, 2005 through payment of the Award.

All other claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 225.00
--------------------------	-------------

#### **Member Fees**

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

Member Surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested in this matter.

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

No three-day cancellation fees were assessed in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court.

Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside

**NASD Dispute Resolution**

**Arbitration No. 04-03083**

**Award Page 3**

his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

**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 the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: September 8, 2004 1 session	
Two (2) Hearing sessions @ \$750.00/session	= \$1,500.00
Hearing Date: April 27, 2005 2 sessions	
<hr/> Total Forum Fees	<hr/> = \$2,250.00

The Panel has assessed the total forum fees of \$2,250.00 to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less Payments</u>	= \$ 225.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

<u>Member Fees</u>	= \$3,550.00
<u>Forum Fees</u>	= \$2,250.00
<u>Total Fees</u>	= \$5,800.00
<u>Less Payments</u>	= \$5,250.00
Balance Due NASD Dispute Resolution	= \$ 550.00

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

**ARBITRATION PANEL**

Bernard A. Becker, CPA

Martin Weinberg

Thomas R. Maimone, Sr.

-

-

-

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/

Bernard A. Becker, CPA

Public Arbitrator, Presiding Chairperson

April 29, 2005

Signature Date

/s/

Martin Weinberg

Public Arbitrator

April 29, 2005

Signature Date

/s/

Thomas R. Maimone, Sr.

Non-Public Arbitrator

May 3, 2005

Signature Date

May 3, 2005

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

NASD Dispute Resolution

Arbitration No. 04-03083

Award Page 4**ARBITRATION PANEL**

Bernard A. Becker, CPA

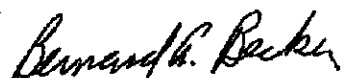
Martin Weinberg

Thomas R. Maimone, Sr.

Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Bernard A. Becker, CPA

Public Arbitrator, Presiding Chairperson

4/29/05

Signature DateMartin Weinberg

Public Arbitrator

Signature DateThomas R. Maimone, Sr.

Non-Public Arbitrator

Signature DateDate of Service (For NASD Dispute Resolution office use only)

04/29/2005 10:01

PAGE 01

APR. 28. 2005 4:42PM

NASD REGULATIONS

NO. 108 P. 5/5

**NASD Dispute Resolution**  
**Arbitration No. 04-03083**  
**Award Page 4**

**ARBITRATION PANEL**

**Bernard A. Becker, CPA**  
**Martin Weinberg**  
**Thomas R. Malmone, Sr.**

- **Public Arbitrator, Presiding Chairperson**  
- **Public Arbitrator**  
- **Non-Public Arbitrator**

**Concurring Arbitrators' Signatures**

**Bernard A. Becker, CPA**  
**Public Arbitrator, Presiding Chairperson**

**Signature Date**



**Martin Weinberg**  
**Public Arbitrator**

**4/29/05**  
**Signature Date**

**Thomas R. Malmone, Sr.**  
**Non-Public Arbitrator**

**Signature Date**

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

ARBITRATION PANEL

Bernard A. Becker, CPA  
Martin Weinberg  
Thomas R. Maimone, Sr.

-  
-  
-

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Bernard A. Becker, CPA  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Martin Weinberg  
Public Arbitrator

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



\_\_\_\_\_  
Thomas R. Maimone, Sr.  
Non-Public Arbitrator

5/3/05  
Signature Date

4/27/05  
Date of Service (For NASD Dispute Resolution office use only)