

**NASD DISPUTE RESOLUTION AWARD**  
**NASD DISPUTE RESOLUTION**

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**CASE: 04-03228**

Cynthia Goldsmith & Phyllis H. Arnold, Claimants v. Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., and Jack B. Grubman, Respondents

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**ATTORNEYS:**

For Claimants, Cynthia Goldsmith & Phyllis H. Arnold, ("Claimants"), appeared Joel Finkelstein, Esq., of the firm Finkelstein & Partners, Newburgh, NY.

Respondents, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. and Jack B. Grubman, ("Respondents"), appeared Bradford D. Kaufman Esq., of the firm Greenberg Traurig P.A., West Palm Beach, FL

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**NATURE OF DISPUTE:** Customer v. Member and Associated Person.

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**DATE FILED:** May 3, 2004.

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**CASE SUMMARY:** Claimants alleged that Respondents violated each of the following: Section 17(a) of the Securities Act of 1933, Chapter 517.301 of the Florida Securities and Investor Protection Act, NASD Rule 2210(d)(1), and the New York Stock Exchange Rule 202.02. Claimants additionally alleged that Respondents breached their fiduciary duty, and omitted to state material facts in connection with the offer and sale of WorldCom stock. Claimants further alleged that Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. is liable for the unlawful and negligent acts of its representative, Respondent Jack B. Grubman, under the doctrine of respondeat superior. Claimants maintained that due to Respondents' actions, their account suffered financial losses.

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**ARBITRATOR'S REPORT: (See Exhibit A)**

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**Claim Data**

Claim: \$11,570.10

Punitive: \$13,000.00

Interest: Unspecified

Attorney Fees: Unspecified

Filing Fees: Unspecified

Other: Unspecified

**Award Data**

Award: \$.00

Punitive: \$.00

Interest: \$.00

Attorney Fees: \$.00

Filing Fees: \$212.50

Other: \$.00

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**AWARD:** The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The claims of Claimants are dismissed in their entirety. 2) All requests for punitive damages are denied. 3) All requests for interest are denied. 4) All requests for attorney fees are denied. 5) All other relief requests are denied. 6) NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimants deposited previously. 6) Respondents are jointly and severally liable and shall pay Claimants \$212.50 as reimbursement of one-half of the filing fee.

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OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc. has paid to NASD Dispute Resolution the \$425.00 Member Surcharge previously invoiced.

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**ARBITRATOR**

Lawrence M. Oberdank - Sole Public Arbitrator

**AFFIRMATION**

I, Lawrence M. Oberdank, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.

Lawrence M. Oberdank  
Lawrence M. Oberdank

October 7, 2004  
Signature Date

October 14, 2004  
Date of Service (For NASD-DR office use only)

# Exhibit A

September 27, 2004

Erica Charles, Legal Assistant  
NASD Dispute Resolution  
One Liberty Plaza  
165 Broadway, 27<sup>th</sup> Floor  
New York, New York 10006-1400

Re: Cynthia Goldsmith & Phyllis H. Arnold,  
JTWROS vs. Citigroup Global Markets,  
Inc. and Jack Grubman,  
Arbitration No. 04-03228

Dear Ms. Charles:

I have reviewed the pleadings and record in the above matter and believe the complaint against Citigroup Global Markets, Inc. and Jack Grubman should be dismissed in its entirety.

Reliance on the Assurances of Discontinuance entered into between the Attorney General of The State of New York, Citigroup Global Markets and Jack Grubman is misplaced because the same are nothing more than settlement agreements and, as such, may not be construed as admissions of wrongdoing. Indeed, paragraph J of the Citigroup assurance and paragraph H of the Grubman understanding clearly state that they may not be deemed an admission or evidence of any wrongdoing, fault or liability in any criminal, civil or administrative proceeding. E-mails and other documents discovered by the Attorney General could have been used but claimants did not offer such evidence and, therefore, did not carry their burden of proof.

What's more, neither Assurance of Discontinuance accuses Citigroup or Grubman of publishing fraudulent or misleading research about Worldcom. Both are accused of publishing false research concerning Focal Communications and Metromedia Fiber and misleading reports on Level 3, Focal, RCN, Adelphia, WCG and XO. Worldcom was excluded because regulators concluded that Grubman's public and private views about the company were not divergent.

Hence, the Assurances do not support the complaint.

Similarly, the First Interim Report of Dick Thornburgh, Bankruptcy Court Examiner is not evidence of wrongdoing on the part of Citigroup Global Markets or Grubman. The August 6, 2002 order of the bankruptcy court required Thornburgh to file a report by November 4<sup>th</sup> and to file additional reports every 120 days thereafter. The First Interim Report was filed in compliance with that order and is merely an explanation of the Examiner's progress to date. It is not a ruling of the court based on its Findings of Fact and Conclusions of Law regarding the fraud practiced by Worldcom and may not be treated as such. Certainly, Thornburgh, himself, cautioned against giving the report such weight when he said it "should not be used in any other proceeding and the statements and information contained herein should not be viewed as an admission by any person or findings by any other person or entity". The report, therefore, proves nothing.

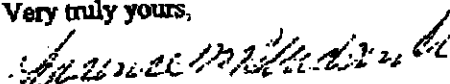
Claimants acquired 350 shares of Worldcom Group and 14 shares of MCI Group between June 19 and August 27, 1998. Grubman rated Worldcom 1M or buy with medium risk on April 9, 1998 and the stock continued to hold that rating until March 18, 2002. No evidence suggests Grubman maintained a buy rating on Worldcom even though he believed the stock did not deserve it and his views regarding purchase of its shares were held by other analysts who also rated the stock a buy. On March 18, 2002, Grubman raised the risk rating on Worldcom from medium to high in response to an SEC accounting inquiry and downgraded the stock from buy to neutral on April 21, 2002. He raised the risk rating on May 9, 2002 from high to speculative and, on June 21, 2002, lowered its rating from neutral to market under perform. Nothing suggests these rating were unwarranted or that Grubman delayed them to assist Worldcom at the expense of investors. Any loss sustained by claimants, therefore, was the result of a fraud practiced by Worldcom, not by Grubman.

Lastly, claimants' own affidavit sheds doubt upon whether they saw or were even aware of the reports published by Citigroup Global Markets or Grubman. Phyllis H. Arnold was the person who dealt with Citigroup's predecessor on behalf of claimants. Yet, by her own admission, she never researched Worldcom and had no direct dealings with Grubman. She purchased the stock on the recommendation of her broker and presumes his advice was based on tainted rating provided by the analyst. Presumption is no substitute for proof, however, and absent evidence that claimants actually saw or read Grubman's reports, there is no basis for finding Citigroup or Grubman responsible for their losses.

The forum fees should be divided between the parties as follows: one fourth to Cynthia Goldsmith, one fourth to Phyllis H. Arnold, one fourth to Citigroup Global Markets, Inc. and one fourth to Jack B. Grubman. This assessment should be joint and several.

Do not hesitate to call me if you have any questions or need additional information.

Very truly yours,

  
Lawrence M. Oberdank