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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Susan Marie Adams IRA

Case Number: 04-03881

Names of the Respondents  
Citigroup Global Markets, Inc., f/k/a  
Salomon Smith Barney, Inc.  
Jack B. Grubman

Hearing Site: Tampa, Florida

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

For Susan Marie Adams IRA, hereinafter referred to as "Claimant": Douglas H. Glicken, Esq., Law Office of Douglas H. Glicken, P.A., Orlando, Florida.

For Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc. ("Citigroup") and Jack B. Grubman ("Grubman"), hereinafter collectively referred to as "Respondents": Jennifer Tomsen, Esq. and Tucker H. Byrd, Esq., Greenberg Traurig, Orlando, Florida.

**CASE INFORMATION**

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

Claimant signed the Uniform Submission Agreement: March 4, 2004.

Statement of Answer filed by Respondents on or about: August 9, 2004.

Respondent Citigroup signed the Uniform Submission Agreement: November 7, 2004.

Respondent Grubman signed the Uniform Submission Agreement: November 3, 2004.

Reply to Respondents' Answer to Statement of Claim filed by Claimant on or about: August 12, 2004.

Claimant's Amended Statement of Claim filed on or about: April 14, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: omission to state material facts and conflicts of interest in violation of Section 17(a) of the Securities Act of 1933; omission to state material facts and conflicts of interest in violation of Chapter 517.301 of the Florida Securities and Investor Protection Act; omission to state material facts and conflicts of interest in violation of violation of NASD Rule 2210(d)(1), Communications with the Public-General Standards; breach of fiduciary duty; and, respondeat superior. The causes of action relate to the Claimant's investment in WorldCom stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim, as amended, and asserted various defenses.

### **RELIEF REQUESTED**

Claimant requested: 1) rescissionary damages in the amount of \$1,429.10; 2) an unspecified amount of punitive damages; 3) interest; 4) costs; 5) attorneys' fees; and, 6) such other relief as deemed appropriate by the undersigned arbitrator (the "Arbitrator").

Respondents requested: 1) that Claimant's Statement of Claim be denied in its entirety, and dismissed with prejudice; 2) attorneys' fees; and, 3) costs.

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

On or about March 10, 2005, Claimant filed a Motion to Proceed Solely on the Pleadings, to Supplement Exhibits and to Amend the Statement of Claim. The parties have agreed this matter will be decided on the pleadings and evidentiary submissions without hearing. On or about March 21, 2005, the Arbitrator granted the motion.

The parties have agreed that the Award in this matter may be executed in counterpart copies.

### **AWARD**

After considering the pleadings and evidence presented, the Arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

All claims are denied for the following reasons:

There is no private right of action under Section 17(a) of the Securities Act of 1933. *Zink v. Merrill, Lynch, Pierce, Fenner & Smith*, 13 F.3d 330, 334 (\*10<sup>th</sup> Cir. 1993). Claimant's reliance on *Gustafson v. Alloyd Company, Incorporated*, 115 S. Ct. 1061, 513 U.S. 561, 131 L.Ed.2d 1, is misplaced and does not alter this conclusion. Accordingly, Claimant cannot prevail on her first enumerated claim.

I do not find that Claimant ever received or reviewed any research reports and thus do not find reliance on any facts that were or were not contained in those reports. Moreover, even if Claimant or an account executive had received and reviewed the research reports, the omitted information (the economically incestuous relationship between Respondents and Mr. Ebberts) was not the proximate cause of Claimant's loss. Still further, I find no evidence that Mr. Grubman's published views about WorldCom stock varied in any way from his personal opinions. Due to the absence of those critical elements I do not find a violation of Chapter 517.301, Florida Statutes.

While SRO rules may measure the prevailing industry standard by which a broker's duty to its customer may be evaluated, there is no private right of action for violation of

NASD rules as a separate cause of action. *See, e.g., Verifone Securities Litigation*, 11 F.3d 865 (9<sup>th</sup> Cir. 1993). While Claimant may not succeed on this cause of action, Claimant has a separate claim based on breach of fiduciary duty. A determination of whether there is a breach of the duty owed by a broker to its customer first requires a determination of the precise duty which is owed. The scope of a broker's duty varies depending on the kind of account it may be. For a managed account, the broker owes all of the duties it would owe to any customer including those with non-discretionary accounts. In addition, in a managed account a broker owes a broad duty to manage the account consistent with the customer's needs and objectives, to follow the account and the market, to protect the customer's interests, to keep the customer informed of activity in the account, and to keep the customer informed of the risks involved. For non-discretionary accounts, the duty owed is narrower.

Perhaps the most generally accepted list of the duties owed in a non-discretionary account is found in *Leib v. Merrill, Lynch, Pierce, Fenner & Smith*, 461 F. Supp 951 (E.D. Mich. 1978). Where an account is non-discretionary, the duties owed to a customer are to recommend a stock only after studying it sufficiently to become informed as to its nature, price, and financial prognosis, to carry out the customer's orders promptly in a manner best suited to serve the customer's interest, to inform the customer of the risks involved in purchasing or selling a particular security, to refrain from self-dealing or refusing to disclose any personal interest the broker may have in a particular recommended security, not to misrepresent any fact material to the transaction, and to transact business only after receiving prior authorization from the customer. A broker has no duty to refuse to execute a trade, and in a non-discretionary account there is no duty to continue following market or financial conditions after executing the trade.

I find no evidence the recommendation of WorldCom stock was flawed due to unsuitability, failure to apprise of the risks or improper execution of any trade. It is obvious the WorldCom stock declined sharply in value when the news of the company's accounting irregularities became public, but the test of suitability is not whether the stock ultimately rose or fell in value, but whether the recommendation was appropriate when made. Based on the information available to Respondents at the time of the recommendations, there is no violation of duty related to any of those aspects. That leaves the duty to refrain from self-dealing, the duty to disclose any personal interest the broker may have, and the duty to avoid misrepresentations. These duties would apply in every account, discretionary or not, and it is precisely these duties Claimant contends were violated. Respondents' performance of those duties would in part be measured by, *inter alia*, NASD Rule 2210(d)(1). I hold that Respondents adequately disclosed the fact that SSB provided investment banking services to WorldCom and that it made a market in WorldCom stock. I hold that the amount either Respondent earned from any business affiliation with WorldCom is not relevant because the existence of the relationship was revealed and hence the possibility of conflict and bias were disclosed. I hold that whether or not SSB granted stock options to Mr. Ebbers does not afford Claimant a right of action. That is the holding even if the options were granted solely as a bribe to induce investment banking business and, in fact, whether doing so violated corporate policy,

SRO rule or federal regulation. For any stock purchases before October of 2000, Claimant simply cannot recover against Respondents under the theories alleged. In October of 2000, the situation changed and the question becomes much closer.

In October of 2000, SSB in effect guaranteed collection of up to \$10 million of a roughly \$53 million debt owed by Mr. Ebberts to Citibank (SSB's parent). In November of 2000, the \$10 million limit of the guarantee disappeared, thus exposing SSB to a theoretical loss of the full amount. This debt was secured by WorldCom stock, thus its guarantee gave SSB a substantial incentive to keep the price of WorldCom stock as high as possible. It is unquestioned that this relationship was never disclosed to the public, whether in a research report or otherwise, and it is obvious Mr. Grubman was totally aware of the existence and extent of the relationship. The incentive to keep the price of the stock as high as possible could generate a substantial potential bias in the research reports, because it would tempt the analyst to tout a stock that the analyst actually believed was a bad investment. One must remember there is no evidence Mr. Grubman ever believed WorldCom stock was a bad investment, and certainly SSB's willingness to stake \$53 million on the value of that stock suggests that it too believed it was a decent investment. Essentially what Claimant urges is a position that it does not matter whether the reports were accurate or not, or whether they were in fact expressions of Mr. Grubman's true opinion. Instead, Claimant's position is that while Respondents may have disclosed the existence of bias, Respondents did not disclose the full extent of their possible bias, that Respondents' failure to do so was a breach of their fiduciary duty and that even if the bias does not appear to have resulted in an unsuitable investment or an unsupported recommendation it is enough that it might have. I disagree. Although the relationship between SSB and WorldCom's stock value is far too close for comfort, it does not appear to have actually resulted in an altered recommendation. Consequently, I hold this is not a basis to support the claim for damages.

Because the record does not clearly reflect that Respondents agreed to submit attorney's fees to determination by the tribunal, I defer to any court of competent jurisdiction the determination as to any parties' entitlement to or the amount of reasonable attorneys' fees. Expungement was not requested and is not warranted.

Any and all claims for relief not specifically addressed herein, including Claimant's 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	= \$ 25.00
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**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, Citigroup is a party and a member firm.

Member surcharge	= \$150.00
Total Member Fees	= \$150.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

There were no adjournment fees assessed during these proceedings.

**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:

There were no three-day cancellation fees assessed during these proceedings.

**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 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.

There were no injunctive relief fees assessed during these proceedings.

**Forum Fees and Assessments**

The Arbitrator has assessed forum fees for each session conducted. A session is any meeting between the parties and Arbitrator, including a pre-hearing conference with the Arbitrator, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with a single arbitrator @ \$50.00/session	= \$ 50.00
Pre-hearing conference: February 23, 2005 1 session	
Total Forum Fees	= \$ 50.00

The Arbitrator has assessed \$16.66 of the forum fees to Claimant.

The Arbitrator has assessed \$33.33 of the forum fees jointly and severally to Respondents.

**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 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 during these proceedings.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 25.00
Forum Fees	= \$ 16.66
Total Fees	= \$ 41.66
<u>Less payments</u>	= \$ 41.66
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Citigroup is solely liable for:

Member Fees	= \$150.00
Total Fees	= \$150.00
<u>Less payments</u>	= \$150.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

Forum Fees	= \$ 33.33
Total Fees	= \$ 33.33
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 33.33

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

**ARBITRATION PANEL**

*Langfred W. White*

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*Public Arbitrator*

**Arbitrator's Signature**

/s/  
Langfred W. White  
Public Arbitrator

July 27, 2005  
Signature Date

July 28, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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

### Fee Summary

Initial Filing Fee	= \$ 25.00
Forum Fees	= \$ 16.66
Total Fees	= \$ 41.66
Less payments	= \$ 41.66
Balance Due NASD Dispute Resolution	= \$ 0.00

<b>Member Fees</b>	\$150.00
<b>Total Fees</b>	\$150.00
<b>Less payments</b>	\$150.00
<b>Balance Due NASD Dispute Resolution</b>	\$ 0.00

<b>Forum Fees</b>	12	\$	33.33
<b>Total Fees</b>	12	\$	33.33
<b>Less payments</b>	12	\$	0.00
<b>Balance Due NASD Dispute Resolution</b>	12	\$	33.33

**ARBITRATION PANEL**

### Public Arbitration

London White

7/22/2025  
Signature Date

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