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

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In the Matter of the Arbitration Between:

Names of the Claimants

Linton H. Erdmann IRA

Lin Erdmann

Linton Industries

Case Number: 04-04088

Names of the Respondents

Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc.

Jack B. Grubman

Hearing Site: Boca Raton, Florida

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

**REPRESENTATION OF PARTIES**

For Linton H. Erdmann IRA, Lin Erdmann and Linton Industries, hereinafter collectively referred to as "Claimants": Douglas H. Glick, Esq., Douglas H. Glick, P.A., Orlando, Florida.

For Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney, Inc. ("SSB") and Jack B. Grubman ("Grubman"), hereinafter collectively referred to as "Respondents": Michael Wallander, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: July 23, 2004.

Amended Statement of Claim filed on or about: July 25, 2004.

Claimant Linton H. Erdmann signed the Uniform Submission Agreement: June 30, 2004.

Claimant Lin Erdmann signed the Uniform Submission Agreement: June 30, 2004.

Claimant Linton Industries signed the Uniform Submission Agreement: June 30, 2004.

Statement of Answer filed by Respondents on or about: August 30, 2004.

Answer to Amended Statement of Claim filed by Respondents on or about: August 30, 2004.

Respondent Grubman signed the Uniform Submission Agreement: March 14, 2005.

Respondent SSB signed the Uniform Submission Agreement: October 26, 2004.

Verified Claim for Attorneys' Fees and Amount filed by Claimants on or about: July 26, 2004.

Reply to Statement of Answer filed by Claimants on or about: September 3, 2004.

**CASE SUMMARY**

Claimants asserted the following causes of action: 1) omission to state material facts and conflicts of interest in violation of Section 17(A) of the Securities Act of 1933; 2) omission to state material facts and conflicts of interest in violation of Chapter 517.301 of the Florida Securities and Investor Protection Act; 3) omission to state material facts and conflicts of interest in violation of NASD Rule 2210(d)(1), Communications with the

Public-General Standards; 4) breach of fiduciary duty; and, 5) respondeat superior. The causes of action relate to Claimants' 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**

Claimants requested: 1) recessionary damages in the amount of \$13,623.73; 2) an unspecified amount of punitive damages; 3) attorneys' fees in the amount of \$12,530.00; 4) costs and fees in the amount of \$951.79; 5) interest; and 6) such other damages the arbitration panel deemed appropriate.

Respondents requested that Claimants' Amended Statement of Claim be denied in its entirety, and dismissed with prejudice, with attorneys' fees and costs assessed against Claimants.

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

On or about June 27, 2005, the parties jointly requested that the Arbitrator make a final determination of this matter on the papers in lieu of conducting an evidentiary hearing, following submission by Claimants of an Amended Statement of Claim and by Respondents of a response thereto. On or about July 12, 2005, the Arbitrator issued an Order granting the parties' request.

### **AWARD**

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

Linton H. Erdman, his IRA, and a corporation owned by him used Salomon Smith Barney ("SSB") as a broker to acquire shares in WorldCom, Inc. between February 1999 and April 2000 for a total cost of about \$27,000.00.

Claimants disposed of the WorldCom shares twice: first in August 2000, selling 212 shares at a profit; and second in a quick series of transactions during February 2002 for a loss. During 1999 and 2000 SSB maintained a "1-Buy" rating on the stock. By February 2002, at which time the crisis in WorldCom was notorious, SSB's rating had been reduced.

Claimants contend that they invested a total of \$27,864.83 in the stock and, netting all sales, lost \$13,400.29. Claimants seek "rescissory damages" totaling \$27,864.83, as well as punitive damages, interest and attorneys' fees.

Respondents oppose all such claims for relief and seek dismissal, with prejudice, along with reimbursement of all costs of the proceedings, including attorneys' fees. Respondents note the \$27,864.83 claim is overstated because Claimants have already received about \$14,241.00 on the sale of the stock. Apart from minor math differences, it also seems that at page 85 of Claimants' brief, Claimants confine themselves to an amended rescissory damage claim of \$13,623.73.

Mr. Erdman has had an account at SSB since 1984. Judging from the papers, Mr. Erdman was a successful businessman and investor, who relied on himself and an independent financial advisor to make all buy/sell decisions executed by SSB. He did not vest SSB with any such authority. There is a conflict between Claimants' assertion in the brief that "he stressed to SSB that he wanted safe investments" and Respondents' counter assertion that Claimants' investment objective was "growth" and included "speculation permitted." We have no testimony and lack copies of all of the account papers. But judging from the excerpts of the account that are in the papers, we see that he was a frequent trader and that he held a wide variety of shares in major growth companies, as well as some traditional value stocks. I see holdings and trades in: Cisco, Sun Microsystems, Textron, Dell, Intel, Omnicom, Bristol Myers Squibb, Tyco, Texas Instruments, Abbott Labs, FNMA, Johnson & Johnson, Becton Dickinson, AIG, Ericsson Tel, Caterpillar, Deere, WalMart, Franklin Resources, Charles Schwab, Merck, Microsoft and Monsanto. (It is interesting that very few of these names escaped the rapid growth in values in the 1990s followed by a sharp decline; or the impact of self-imposed difficulties in valuation; or the difficulties of questionable behavior with regulators.)

The core of the allegation is that SSB should have disclosed to Mr. Erdman and his advisor that SSB had an investment banking relationship with WorldCom in all of its detail, including the role that the analyst Mr. Grubman was playing in assisting WorldCom and the special IPO opportunities afforded to Mr. Ebberts. Claimants say that if these details had been included, they might have refrained from the investment. They attack the "1-Buy" rating as misleading.

The instant case is but one of hundreds that have been presented in NASD Dispute Resolution ("NASD") arbitration by this attorney (and others), against SSB and its current owner Citigroup, all as a fall-out from the collapse of WorldCom and subsequent public investigations and criminal proceedings.

Although Claimants recount additional mistakes by SSB, in late 2000 and following, when SSB was engaged with Citibank and Morgan Keegan in efforts to bail out all concerned, including Mr. Ebberts, that happened after the "buy" activity by the Claimants.

After reviewing the extensive briefs, I conclude:

- 1) Claimant Lin Erdman was a sophisticated and substantial investor who retained all discretion over his accounts for the purchase and sale of securities, never delegating that to Respondents.
- 2) In 1999 and early 2000, the WorldCom investment was consistent with the pattern of quality, size and industry focus that Claimants had chosen for their portfolio in general. At the time, this stock had general public acceptance as a legitimate growth vehicle, judging from its price run-up and the acceptance by industry analysts, not just SSB.
- 3) SSB did reveal to investors that it had an investment banking relationship with WorldCom and sought an expanded relationship.
- 4) In late 2000, Claimants sold a block of WorldCom on their own initiative for a profit at a time when SSB was yet maintaining its "1-Buy" rating.
- 5) There is no affirmative claim or proof in this record that Claimants ever studied or relied on SSB's analytical report upon WorldCom.
- 6) Claimants did suffer a market loss on the final portions of stock sold in 2002, but there is no affirmative proof that SSB caused WorldCom's demise, or Mr. Ebber's criminal behavior, or the

decline in market value of the shares.

- 7) The extent of the duties that Respondents undertook vis-à-vis Claimants was to transact trades, keep records and make account reports to Claimants. Respondents fulfilled their duties.
- 8) It is not necessary or appropriate for an individual arbitrator to stretch the purposes or authority given him over individual cases like this one, in order to visit some special, added punishment upon SSB and its heirs. The investment banking behavior recounted in the press and in these papers was obviously reprehensible, but it was not the cause of Claimants' market loss on their investment. There is no public policy need to pile on retail punishments and punitives for the enrichment of the private bar, where the public investigation and negotiated penalties have been enormous, corrective and for the public benefit. Given the fact that there is no proof that SSB caused the market loss or that Claimants actually relied on materials or advice from SSB to make this investment, I have concluded to DISMISS the Claims in their entirety, with prejudice.

Each party is to bear its own costs.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages and Claimants' for relief pursuant to Florida Statutes, Chapter 517, 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	= \$125.00
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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, Respondent SSB is a member firm and a party.

Member Surcharge	= \$425.00
Total Member Fees	= \$425.00

#### 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 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 Arbitrator.

Injunctive relief fees were not assessed in this matter.

**Forum Fees and Assessments**

The Arbitrator 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 Arbitrator @ \$450.00/session	= \$450.00
Pre-hearing conference: November 8, 2004 1 session	

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Total Forum Fees	= \$450.00
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The Arbitrator has assessed forum fees of \$225.00 to Claimants, jointly and severally.

The Arbitrator has assessed forum fees of \$225.00 to Respondents, jointly and severally.

**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 in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 125.00
Forum Fees	= \$ 225.00
Total Fees	= \$ 350.00
<u>Less Payments</u>	<u>= \$ 350.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent SSB is solely liable for:

<u>Member Fees</u>	<u>= \$425.00</u>
Total Fees	= \$425.00
<u>Less Payments</u>	<u>= \$425.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents are jointly and severally liable for:

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

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

**ARBITRATOR**

Richard Charles Hotvedt, Esq.

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Public Arbitrator

**Arbitrator's Signature**

/s/  
Richard Charles Hotvedt, Esq.  
Public Arbitrator

September 27, 2005  
Signature Date

September 30, 2005  
Date of Service (For NASD Dispute Resolution office use only)

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

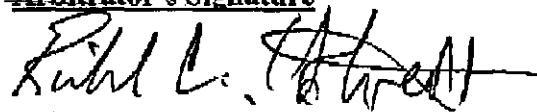
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATOR

Richard Charles Hotvedt, Esq.

Public Arbitrator

Arbitrator's Signature



Richard Charles Hotvedt, Esq.  
Public Arbitrator

9/27/05

Signature Date

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