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

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In the Matter of the Arbitration Between:

Name of the Claimant

Hildred Levine, Individually, as Trustee and  
as Beneficiary of the Hildred Levine Revocable Trust,  
the Charles Levine Trust and the Fannie Milstein  
Revocable Trust

Case Number: 04-06804

Name of the Respondent

Citigroup Global Markets, Inc. d/b/a Smith Barney

Hearing Site: Boca Raton, Florida

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Hildred Levine, Individually, as Trustee and as Beneficiary of the Hildred Levine Revocable Trust, the Charles Levine Trust and the Fannie Milstein Revocable Trust, hereinafter collectively referred to as "Claimant": Jeffrey Erez, Esq., Sonn & Erez, Ft. Lauderdale, Florida.

For Citigroup Global Markets, Inc. d/b/a Smith Barney, hereinafter referred to as "Respondent": Jason S. Haselkorn, Esq., Boose Casey Ciklin Lubitz Martens McBane & O'Connell, Ft. Lauderdale, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: September 24, 2004.

Claimant signed, but did not date, the Uniform Submission Agreement.

Statement of Answer and Motion to Strike filed by Respondent on or about: November 22, 2004.

Respondent signed the Uniform Submission Agreement: November 22, 2004.

[Unopposed] Motion to Substitute Parties filed by Claimant on or about: December 9, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty (Count I); negligence (Count II); negligent supervision (Count III); negligent misrepresentation (Count IV); fraud (Count V); violation of Section 10(b) of the Securities Exchange Act and Rule 10b-5 of the Securities and Exchange Commission (Count VI); and, aiding and abetting in the breach of fiduciary duty (Count VII). The causes of action relate to the purchase in Claimant's accounts of various mutual funds and technology and communications common stocks, including, but not limited to, the following: Dreyfus Premier Technology Growth Fund; Goldman Sachs Large Cap Growth Fund; Sun Microsystems; Lycos; Compaq Computer; Nextel Communications; Level 3 Communications; Nortel; Qwest Communications; Oracle; Worldcom; Ericsson; Qualcomm; and, America Online.

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of between \$500,000.00 and \$1,000,000.00, an unspecified amount of punitive damages, interest, costs, and such other and further relief as deemed just and proper by the Panel.

Respondent requested that the Statement of Claim be dismissed in its entirety and that Respondent be awarded its costs of this proceeding.

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

In its Answer, Respondent moved to strike certain sections from the Statement of Claim, asserting that those sections have no bearing on the actual facts of the case. Claimant did not file a response. The Panel denied the motion and accepted Claimant's entire Statement of Claim as pled.

After the Statement of Claim in this matter was filed, Fannie Milstein passed away. Thereafter, Claimant filed an unopposed Motion to Substitute Parties, in which Claimant requested that Hildred Levine, in her capacity as trustee and beneficiary of the Fannie Milstein Revocable Trust, be substituted for Fannie Milstein as Claimant in this matter. On or about February 1, 2005, the Panel issued an Order granting Claimant's motion.

During the evidentiary hearing and pursuant to the agreement of the parties, the Panel ordered that the caption in this matter be amended to incorporate the Charles Levine Trust, with Hildred Levine acting in her capacity as trustee and beneficiary thereof.

At the conclusion of Claimant's case, Respondent moved for a directed verdict, which the Panel granted on Counts IV, V, VI and VII, and denied on Counts I, II, and III.

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 not liable on any of Claimant's claims for relief. Accordingly, Claimant's Statement of Claim is dismissed, with prejudice.

All other 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

= \$ 375.00

**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	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No adjournment fees were incurred 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 incurred 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 Panel.

No injunctive relief fees were incurred 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 @ \$1,200.00/session	= \$ 1,200.00
Pre-hearing conference: February 1, 2005 1 session	
Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: June 14, 2005 1 session	
August 3, 2005 1 session	
Eight (8) Hearing sessions @ \$1,200.00/session	= \$ 9,600.00
Hearing Dates: August 8, 2005 1 session	
August 9, 2005 2 sessions	
August 10, 2005 2 sessions	
August 11, 2005 2 sessions	
August 12, 2005 1 session	
<hr/> Total Forum Fees	<hr/> = \$11,700.00

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The Panel has assessed forum fees of \$5,850.00 to Claimant.  
The Panel has assessed forum fees of \$5,850.00 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.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 5,850.00
<u>Total Fees</u>	<u>= \$ 6,225.00</u>
<u>Less Payments</u>	<u>= \$ 1,575.00</u>
Balance Due NASD Dispute Resolution	= \$ 4,650.00

Respondent is solely liable for:

Member Fees	= \$ 7,000.00
Forum Fees	= \$ 5,850.00
<u>Total Fees</u>	<u>= \$12,850.00</u>
<u>Less Payments</u>	<u>= \$10,000.00</u>
Balance Due NASD Dispute Resolution	= \$ 2,850.00

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

**ARBITRATION PANEL**

Barry B. Globerman, Esq.	-	Public Arbitrator, Presiding Chairperson
Elena G. Rodriguez	-	Public Arbitrator
Karen Z. Fischer	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Barry B. Globerman, Esq.  
Public Arbitrator, Presiding Chairperson

August 15, 2005  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Elena G. Rodriguez  
Public Arbitrator

August 15, 2005  
Signature Date

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/s/  
Karen Z. Fischer  
Non-Public Arbitrator

August 15, 2005  
Signature Date

August 16, 2005  
Date of Service (For NASD Dispute Resolution office use only)

**NASD Dispute Resolution**  
**Arbitration No. 04-06804**  
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Elena G. Rodriguez	-	Public Arbitrator
Karen Z. Fischer	-	Non-Public Arbitrator

### Concurring Arbitrators' Signatures

*Barry B. Globerman*  
Barry B. Globerman, Esq.  
Public Arbitrator, Presiding Chairperson

8-15-05  
Signature Date

**Elena G. Rodriguez**  
Public Arbitrator

**Signature Date**

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### ARBITRATION PANEL

Barry B. Globerman, Esq.

Elena G. Rodriguez

Karen Z. Fischer

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Public Arbitrator, Presiding Chairperson

Public Arbitrator

Non-Public Arbitrator

### Concurring Arbitrators' Signatures

Barry B. Globerman, Esq.

Public Arbitrator, Presiding Chairperson

Signature Date

*Elena G. Rodriguez*


Elena G. Rodriguez

Public Arbitrator

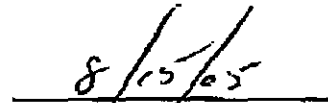
*8/15/2005*

Signature Date

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Karen Z. Fischer  
Non-Public Arbitrator

  
Signature Date

\_\_\_\_\_  
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