

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Name of Claimant

Marla Lindemann

and

04-06995

Phoenix, Arizona

Name of Respondent

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

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

Marla Lindemann ("Claimant") was represented by James Richard Hooper, Esq., Hooper & Weiss, LLC, Orlando, Florida.

Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney Inc. ("Respondent") was represented by Kim Alexander, Esq., Keesal, Young & Logan, San Francisco, California.

**CASE INFORMATION**

The Statement of Claim was filed on or about October 4, 2004. Submission Agreement of Claimant Marla Lindemann was signed on October 1, 2004.

Statement of Answer was filed by Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney Inc. on or about December 29, 2004. Submission Agreement of Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney Inc. was signed on January 10, 2005.

**CASE SUMMARY**

Claimant alleged that:

Citigroup failed to disclose several deep and disabling conflicts of interest that existed in its relationships with WorldCom. Claimant sustained enormous losses as a direct result of Citigroup's actions. WorldCom employees like Claimant were among the most vulnerable and sustained some of the greatest losses

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In its pervasive and relentless misconduct, Citigroup breached the most fundamental of professional obligations: in failing to make proper recommendations, failing to make timely recommendations to achieve suitable asset allocation, and on specific strategies to protect against downside losses in changing market conditions.

In sum, Claimant sustained enormous losses as a direct result of Citigroup's pervasive fraud and corruption that reached from Wall Street to many of Citigroup's retail customers. WorldCom employees, like Claimant in the instant case, were left impoverished as a result of Citigroup's malfeasance. In Claimant's view of Respondents' fraud and misconduct, the law is clear: Citigroup, rather than Claimant, should bear the losses from the sharp market decline in the value of WorldCom stock. These losses were compounded by Citigroup's misconduct at the retail brokerage level, including its initial unsuitable recommendations by a poorly trained and unsupervised Citigroup broker who failed to make timely recommendations to achieve a suitable asset allocation, and on specific strategies to protect against downside losses in changing market conditions. In its pervasive, deliberate and relentless fraud, Citigroup failed to observe and comply with appropriate standards and safeguards required by law. Citigroup committed fraud on the market and manipulated the price of WorldCom stock to the detriment of the investors.

The factual background is discussed more fully in the Award section below.

Respondent denied the allegations set forth in the Statement of Claim. Respondent specifically stated:

Ignoring the significance of her own company's massive accounting fraud, Ms. Lindemann, an employee of WorldCom, seeks to hold Smith Barney liable for her affirmative decision *not to exercise her alleged WorldCom employee stock options* prior to the historic market downturn and sell them at a profit. She alleges that from 1999 through 2001, she received approximately 2,578 options to purchase WorldCom shares, but admittedly did not exercise any of her WorldCom options. (Statement of Claim, ¶ 12.) However, Ms. Lindemann has not provided any information from WorldCom demonstrating that she was in fact granted options. Ms. Lindemann seeks to make Smith Barney the guarantor of her stock option investment strategy simply because Smith Barney issued research reports based on WorldCom's publicly available information. Ms. Lindemann essentially argues that a brokerage firm that issues research reports on a company based on publicly available information (information which later is revealed to be false) should be liable to employees of the company – *who never even took the advice of Smith Barney* – at a maximum trading value of their options after the price of the company's stock falls as a result of the company's fraud on the public.

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### **RELIEF REQUESTED**

Claimant requested an Award against respondent for cumulative damages in an amount not less than \$35,000.00, and punitive damages in an amount to be determined from the evidence accumulated during discovery, plus interest, costs, attorneys' fees, and such other damages that the Arbitration Panel deems appropriate.

Respondent requested that the Statement of Claim be dismissed in its entirety with prejudice, and that the panel award Smith Barney its costs incurred in defending this unmeritorious claim.

### **OTHER ISSUES CONSIDERED & DECIDED**

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Dispute Resolution (the "NASD").

### **AWARD**

After considering the pleadings and the statements of counsel at the preliminary hearings, the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

#### **Factual Background:**

Claimant Marla Lindemann was an employee of WorldCom and received stock options as part of her compensation. Respondents (through Salomon Smith Barney)(SSB), administered WorldCom's stock option program.

Claimant never exercised her options. Through the complaint and the representations of her counsel, which are assumed to be true for the purposes of this ruling, she alleges that she did not exercise those options based on four principal reasons. First, WorldCom's CFO, Bernard Ebbers had not sold his stock. Second, SSB's WorldCom analyst, Jack Grubman, was bullish on WorldCom, and had a buy rating on the stock. Third, Claimant said she did not know about, and would have been significantly influenced by, the personal loans SSB made to Mr. Ebbers, which were collateralized by his WorldCom stock. Because of these loans, Claimant asserts that Mr. Ebbers effectively cashed out of WorldCom stock in secret, artificially propping up the price of its stock. Claimant's counsel indicated that there was recourse to Mr. Ebbers, but he did not have many personal assets, other than the stock or the proceeds from the loan. Finally, SSB did not disclose their practices of allowing Mr. Ebbers to participate in IPO's and immediately sell the shares to realize profits, a practice commonly known as "spinning."

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Claimant also had some WorldCom stock in other accounts, including her 401(k) plan, which she claims she did not sell in reliance on the above factors as well. SSB did not administer the 401(k) plan and those other accounts were not held by Respondents.

Claimant raised 5 causes of action.

Breach of Fiduciary Duty.

Ms. Lindemann claims that Respondents breached their fiduciary duty to her in providing misleading investment advice (through the failure to disclose the personal loans, the spinning and other relationships between WorldCom and SSB, as well as the bullish reports of Mr. Grubman). The investment reports did contain a disclaimer that disclosed the existence of certain investment banking and other business relationships between WorldCom and SSB. SRO rules did not require express disclosure of the loans or other business relationships. With those disclaimers and other statements in Mr. Grubman's reports cited in Respondent's answer, Claimant cannot assert a claim against SSB for breach of fiduciary duty due to the favorable recommendations of Mr. Grubman in his reports. That fact is not changed because WorldCom chose to distribute those reports to its employees. An analyst and his company does not assume a fiduciary duty to all those who read the report.

Moreover, SSB did not assume a fiduciary duty to Claimant simply because it administered the WorldCom stock option program. There are no allegations made by Claimant that she contacted an SSB financial representative for personal, individualized investment advice that may have created a fiduciary duty. The nature of administering the stock option program is too tenuous to create a fiduciary duty sufficient to create liability by SSB for statements made in an analyst's report. Similarly, SSB did not become liable for her failure to sell her stock held in other accounts not administered by SSB, such as her 401(k) account.

Neither did SSB become liable for the actions of Mr. Ebberts, including the fact that he had not sold his stock. That he may have entered into a transaction allegedly to protect himself from eventual losses in the stock was not illegal and was not required at that time to be disclosed by SRO rules or the securities laws. Many executives entered into similar transactions, such as hedges, caps and collars, none of which were required to be disclosed at the time of these events. Mr. Ebberts remained liable on the loans, based on statements from Ms. Lindemann's counsel, and SSB had recourse to the proceeds from the loans, as well as to the stock. Thus, even if Ms. Lindemann and other investors would have desired to learn of those relationships, SSB does not have liability to Ms. Lindemann for not disclosing them for the reasons noted above.

Finally, Ms. Lindemann did not exercise her options, so she does not have a transaction on which to assert her claim for a breach of fiduciary duty. Her claim for breach of fiduciary duty must fail.

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Aiding and Abetting WorldCom's Breach of Fiduciary Duty.

Ms. Lindemann also claims that SSB should be liable for the alleged breach by WorldCom of its fiduciary duty to her, based on the failure to disclose the transactions between Mr. Ebberts and SSB and other wrongdoing. Presumably, she believes SSB was such an integral part of that deception that it should be liable, along with WorldCom for those violations. For the reasons noted above, she cannot assert a cause of action against SSB directly for failure to disclose the existence of those relationships (beyond the disclaimers included in the reports). Therefore, SSB cannot be indirectly liable for those alleged misstatements through WorldCom or Mr. Ebberts.

Failure to Supervise.

Ms. Lindemann claims that SSB failed to supervise her options, in violation of NYSE rules. As Claimant acknowledges, there is no private right of action for a violation of these rules. This claim must be dismissed.

Breach of Contract/Negligence.

Claimant alleges that the violation of SRO rules set the standards in negligence and breach of contract actions. Claimant, however, did not set forth how the alleged breaches of the NASD and NYSE rules cited constitute a breach of contract (the Statement of Claim does not indicate what contract is allegedly breached), nor does it specify how those rules establish negligence actionable by Claimant against SSB based on these facts. As noted above, SSB did not render individualized personal investment advice to Claimant, and the general report by Mr. Grubman is not actionable by Ms. Lindemann in these circumstances. Accordingly, these combined claims are dismissed.

Employment of Manipulative and Deceptive Devices.

Counsel for Claimant conceded at the hearing that this claim must be withdrawn, because one must be a purchaser or sell of securities to assert a claim for a violation of Section 10b-5 under the Securities and Exchange Act.

Communications to the Public.

Finally, Ms. Lindemann cites various SRO rules that require communications to the public to be not misleading. Again, there are no private rights of action based on these alleged rule violations, so this cause of action must be dismissed.

In conclusion, none of the claims asserted by Ms. Lindemann is actionable against Respondents and are therefore dismissed.

All costs for the NASD arbitration proceedings shall be assessed against Claimant.

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That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.

Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys' fees, not specifically awarded or otherwise provided for above.

### FEES

Pursuant to 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 = \$175.00

#### 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. In this matter, the member firm(s) is Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney Inc.

Member surcharge	\$	875.00
Pre-hearing process fee	\$	750.00
Total Member Fees	\$	1,625.00

#### Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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:

2 Pre-hearing session(s) with a single arbitrator	x	\$450.00	\$	900.00
March 10, 2005	1	session		
July 7, 2005	1	session		
Total Forum Fees			\$	900.00

The Arbitration Panel has assessed \$900.00 of the forum fees to Marla Lindemann.

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**Fee Summary**

Claimant, Marla Lindemann, shall be and hereby is liable for:

Initial Filing Fee	= \$	175.00
<u>Forum Fees</u>	= \$	900.00
Total Fees	= \$	1,075.00
<u>Less payments</u>	= \$	-625.00
Balance Due NASD Dispute Resolution	= \$	450.00

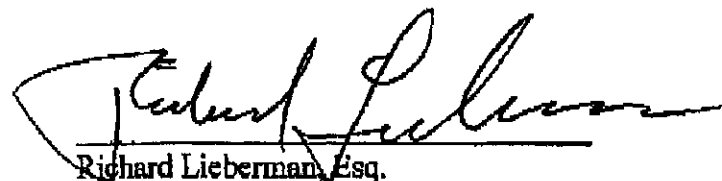
Respondent, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney Inc., shall be and hereby is liable for:

Member Fees	= \$	1,625.00
Total Fees	= \$	1,625.00
<u>Less payments</u>	= \$	-2,375.00
Balance to be refunded by NASD Dispute Resolution	= \$	- 750.00

All balances are due to NASD Dispute Resolution

**ARBITRATION PANEL**

Richard Lieberman, Esq. - Public Arbitrator, Presiding Chair



Richard Lieberman, Esq.  
Public Arbitrator, Presiding Chair

8/4/05  
Signature Date

8/5/05  
Date of Service (For NASD office use only)