

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Pat Desmond, Jr. and Ann Desmond, Claimants v. Citigroup Global Markets Inc. f/k/a Salomon Smith Barney Inc. and Paul A. Pollard, Respondents

Case Number: 04-07242

Hearing Site: Los Angeles, California

Nature of the Dispute: Customers v. Member and Associated Person

REPRESENTATION OF PARTIES

For Claimants:

John L. Monteleone, CPA
Redondo Beach, California

For Respondents:

Harry T. Walters, Esq.
Citigroup Global Markets Inc.
New York, New York

CASE INFORMATION

Statement of Claim filed: October 13, 2004

Claimants' Joint Uniform Submission Agreement signed: October 4, 2004

Joint Statement of Answer and Motion to Dismiss filed by Respondents: December 9, 2004

Respondent Citigroup Global Markets Inc. f/k/a Salomon Smith Barney Inc.'s Uniform Submission Agreement signed: December 9, 2004

Respondent Paul A. Pollard's Uniform Submission Agreement signed: October 28, 2004

CASE SUMMARY

Claimants alleged negligence, breach of fiduciary duty, and unsuitability. Claimants' claims involved the merging of two life insurance policies, as well as a Franklin mutual fund.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and filed a Motion to Dismiss alleging that Claimants' claims are time barred.

RELIEF REQUESTED

Claimants requested \$114,638.65 in compensatory damages, and costs including forum fees, witness fees, and production fees.

Respondents requested dismissal of the Claimants' Statement of Claim in its entirety and costs. In addition, Respondent Paul A. Pollard requested that all references to this matter be ordered expunged from his U-4 Registration Form.

OTHER ISSUES CONSIDERED AND DECIDED

On November 20, 2004 and December 6, 2004, Claimants and Claimants' representative signed a Waiver Agreement expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 9, 2004, Respondents' counsel signed a Waiver Agreement on Respondents' behalf expressly waiving any and all rights and benefits under California Civil Code Section 1542 and the California Ethical Standards for Neutral Arbitrators.

On December 9, 2004, Respondents filed a Motion to Dismiss with their Answer. On February 22, 2005, Claimants filed their Response to the Motion to Dismiss. On March 14, 2005, the Panel and parties held a telephonic pre-hearing conference to hear oral argument on Respondents' Motion to Dismiss. On March 14, 2005, the Panel issued an Order on Respondents' Motion to Dismiss Claimants' Statement of Claim. The Order states in relevant part:

Panel and Counsel convened telephonically Monday, March 14, 2005, and Oral Arguments were heard on the Motion served on Claimants and NASD Dispute Resolution, and Claimants' Responses thereto. This dispositive motion was fully addressed, arbitrators posed questions to Attorney Walters and Accountant, Mr. Monteleone on behalf of Claimants, and deliberations were then conducted among the panel members.

The Motion Before the Panel

Respondents had previously served their Motion to Dismiss Claimants' Statement of Claim in conjunction with Respondents' Answer thereto, and this date had been selected for the full panel to hear the Motion at the time of the Initial Prehearing Scheduling Conference. Claimants had served their Opposition to the motion on February 22, 2005, the panel having been provided it thereafter by transmittal of February 24, 2005, from Attorney McNamire. The Motion to Dismiss the Statement of Claim is based on

allegations that Claimants had allowed the statute of limitations for formally submitting such claims to expire as is set out in NASD Code of Arbitration Procedure Section 10304 and other relevant governmental agency regulations. Claimants argued in their pleadings and orally that the subject statutes of limitations had not run as averred by Respondents, and that 'discoveries' and 'events' subsequent to issuance of the financial documents at point herein had taken place which tolled the statutes and therefore served to extend the applicable deadlines.

The Panel's Ruling

On Respondents' Motion to Dismiss Claimants' Statement of Claim with Prejudice, the Panel rules that it is **GRANTED**, and that this proceeding shall not go forward; except for the Panel's consideration of and ruling upon a pending Motion from Respondent seeking expungement of this arbitration proceeding from the official records of Respondent Pollard.

On March 19, 2005, Claimants filed a Motion to Reopen the Hearings. On April 7, 2005 and April 18, 2005, Respondent filed their opposition to Claimants' Motion to Reopen the Hearings.

On April 7, 2005, Respondents filed a motion to seek expungement of this matter from the CRD record of Respondent Paul A. Pollard. On April 17, 2005, Claimants filed a response to Respondents' motion for expungement.

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, testimony, and evidence presented at the pre-hearing, the Panel decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimants' Motion to Reopen the Hearings is denied. It is the Panel's finding that all applicable statutes of limitations governing the filing of the claim had run prior to its initial submission.
- 2) Claimants' claims are dismissed with prejudice.
- 3) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Paul A. Pollard's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Respondent Paul A. Pollard must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
- 4) Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.
- 5) Pursuant to Rule 2130, the Arbitration Panel has made the following affirmative finding of fact: The claim, allegation, or information is false.
- 6) The parties shall bear their respective costs, including attorney's fees.
- 7) All other relief requested and not expressly granted is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$ 300.00
--------------------------	-------------

Member Fees

Member fees are assessed to each member firm that is either a party in the matter or an employer of a respondent associated person at the time of the events that gave rise to the dispute, claim, or controversy. Accordingly, the member firm Citigroup Global Markets Inc. f/k/a Salomon Smith Barney Inc. is a party and the following fees are assessed:

Member Surcharge	= \$ 1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$ 2,750.00
Total Member Fees	= \$ 5,200.00

Forum Fees and Assessments

The Panel assessed a forum fee for each pre-hearing conference or hearing session conducted. A pre-hearing conference and hearing session is any meeting between the parties and the Panel. The following fees are assessed:

2 Pre-hearing conference sessions with the Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: February 9, 2005	1 session
March 14, 2005	1 session
Total Forum Fees	= \$ 2,250.00

1. The Panel assessed \$1,125.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$1,125.00 of the forum fees jointly and severally to Respondents.

Fee Summary

1. Claimants are charged jointly and severally with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,125.00
Total Fees	= \$ 1,425.00
<u>Less payments</u>	= \$(1,425.00)
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent Citigroup Global Markets Inc. f/k/a Salomon Smith Barney Inc. is charged with the following fees and costs:

Member Fees	= \$ 5,200.00
<u>Less payments</u>	= \$(2,450.00)
Balance Due NASD Dispute Resolution	= \$ 2,750.00

3. Respondents are charged jointly and severally with the following fees and costs:

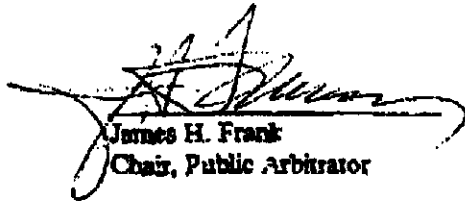
Forum Fees	= \$ 1,125.00
<u>Less payments</u>	= \$(0.00)
Balance Due NASD Dispute Resolution	= \$ 1,125.00


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

ARBITRATION PANEL

James H. Frank	-	Public Arbitrator, Presiding Chair
Thomas E. Higgins, ASA	-	Public Arbitrator
Oren Peretz	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


James H. Frank
Chair, Public Arbitrator

22 APRIL 2005
Signature Date 

Thomas E. Higgins, ASA
Public Arbitrator

Signature Date

Oren Peretz
Non-Public Arbitrator

Signature Date

4/25/05
Date of Service


ARBITRATION PANEL

James H. Frank	-	Public Arbitrator, Presiding Chair
Thomas E. Higgins, ASA	-	Public Arbitrator
Oren Peretz	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James H. Frank
Chair, Public Arbitrator

Signature Date



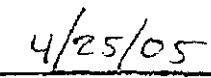
Thomas E. Higgins, ASA
Public Arbitrator



Signature Date

Oren Peretz
Non-Public Arbitrator

Signature Date



Date of Service

ARBITRATION PANEL

James H. Frank	-	Public Arbitrator, Presiding Chair
Thomas E. Higgins, ASA	-	Public Arbitrator
Oren Peretz	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

James H. Frank
Chair, Public Arbitrator

Signature Date

Thomas E. Higgins, ASA
Public Arbitrator

Signature Date



Oren Peretz
Non-Public Arbitrator

4-25-2005

Signature Date

4/25/05

Date of Service