

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

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In the Matter of the Arbitration Between:

Mary M. Massimo (Claimant) vs. Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Kevin McGrath and Mark R. Phillips (Respondents)

Case Number: 04-07327

Hearing Site: New York, New York

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

**REPRESENTATION OF PARTIES**

Claimant Mary M. Massimo hereinafter referred to as "Claimant": Cynthia Boyer Okrent, Esq., Cullen and Dykman Bleakley Platt LLP, New York, NY.

Respondents Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, ("Citigroup"), Kevin McGrath ("McGrath") and Mark R. Phillips ("Phillips") hereinafter collectively referred to as "Respondents": Adam D. Cole, Esq., and Kathryn S. Gostinger, Esq., GreenbergTraurig, LLP, New York, NY. Previously represented by William D. Briendel, Esq., Greenberg Traurig, LLP, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: October 13, 2004.

Claimant signed the Uniform Submission Agreement: October 5, 2004.

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

Respondent Citigroup signed the Uniform Submission Agreement: December 18, 2004.

Respondent McGrath signed the Uniform Submission Agreement: February 11, 2005.

Respondent Phillips signed the Uniform Submission Agreement: February 14, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: unauthorized transactions, negligence, breach of fiduciary duty, failure to execute and failure to supervise. The causes of action relate to Non-Qualified Stock Options ("Non-Quals") and Incentive Stock Offerings ("ISO's").

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

### **RELIEF REQUESTED**

Claimant requested compensatory damages of not less than \$500,000.00, interest, costs and disbursements, attorneys' fees and such other and further relief as the arbitrators deem just and proper.

Respondents requested dismissal of the Statement of Claim in its entirety and expungement of this matter from the CRD records of McGrath and Phillips.

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

At the hearing, Respondents made a Motion for Summary Judgment based on ratification. Claimant denied that the trade was ratified. After due deliberation, the Panel denied the Motion.

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.

### **AWARD**

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

1. Respondent Citigroup Global Markets, Inc. is liable for and shall pay to Claimant compensatory damages in the amount of \$60,000.00.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Kevin McGrath's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to members 04-16, Respondent Kevin McGrath must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation or an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is false.

3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Mark R. Phillips' registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to members 04-16, Respondent Mark R. Phillips must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation or an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is false.

4. Any and all relief not specifically addressed herein is denied.

### **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 = \$ 300.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the event giving rise to the dispute. Accordingly, Citigroup Global Markets, Inc. is a party.

Member surcharge = \$ 1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 2,750.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

October 18, 2005, adjournment by Claimant = Waived

April 11 - 13 2006, adjournments by Respondents = \$1,125.00

#### **Three-Day Cancellation Fees**

Fee apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

October 18, 2005, adjournment by Claimant = Waived

#### **Forum Fees and Assessments**

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

Two (2) Pre-hearing sessions with Panel @ \$1,125.00/session	= \$ 2,250.00
Pre-hearing conferences: February 22, 2005	1 session
November 10, 2005	1 session

Six (6) Hearing sessions with Panel @ \$1,125.00/session	= \$ 6,750.00
Hearing Dates: July 18, 2006	2 sessions
July 19, 2006	2 sessions
July 20, 2006	2 sessions

Total Forum Fees	= \$ 9,000.00
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1. The Panel has assessed \$4,500.00 of the forum fees to Claimant.
2. The Panel has assessed \$4,500.00 of the forum fees jointly and severally to Respondents.

### Fee Summary

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 4,800.00
Less payments	= \$ 1,575.00
Balance Due NASD Dispute Resolution	= \$ 3,225.00

2. Respondent Citigroup Global Markets, Inc. is solely liable for:

Member Fees	= \$ 5,200.00
Total Fees	= \$ 5,200.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondents Citigroup, McGrath and Phillips are jointly and severally liable for:

Adjournment Fees	= \$ 1,125.00
Forum Fees	= \$ 4,500.00
Total Fees	= \$ 5,625.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 5,625.00

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

**ARBITRATION PANEL**

Frank M. Suttell	-	Public Arbitrator, Presiding Chairperson
Boyd H. Scheff	-	Public Arbitrator
J. Scott Colesanti, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Frank M. Suttell  
Public Arbitrator, Presiding Chairperson

7/26/06  
Signature Date

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Boyd H. Scheff  
Public Arbitrator

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Signature Date

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J. Scott Colesanti, Esq.  
Non-Public Arbitrator

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Signature Date

August 1, 2006

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Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

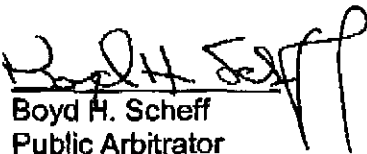
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Signature Date

  
Boyd H. Scheff  
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Signature Date

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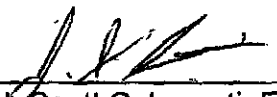
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