
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Harry Cole Yarbrough

Case Number: 04-07567

Name of the Respondent
Citigroup Global Markets, Inc., d/b/a
Smith Barney
Brian Fitzgerald

Hearing Site: Atlanta, Georgia

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

REPRESENTATION OF PARTIES

For Harry Cole Yarbrough, hereinafter referred to as "Claimant": G. Michael Smith, Esq., Dean, Smith & Therrell, P.A., Atlanta, Georgia.

For Citigroup Global Markets, Inc., d/b/a Smith Barney ("Citigroup") and Brian Fitzgerald ("Fitzgerald"), hereinafter referred to as "Respondents": Raul Sanchez, First Vice President, Associate General Counsel, Citigroup Global Markets, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: October 26, 2004.

Claimant signed the Uniform Submission Agreement: October 25, 2004.

Statement of Answer filed by Respondents on or about: January 28, 2005.

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

Respondent Fitzgerald signed the Uniform Submission Agreement: January 17, 2005.

Motion to Dismiss and Request for Sanctions filed by Respondents on or about: March 16, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: 1) negligence; and, 2) breach of agreement. The causes of action relate to the failure to sell certain stocks when they declined a specified amount, including, but not limited to, MFS, EMC, General Electric and Sun Microsystems in Claimant's accounts.

Claimant identified his claim as a breach of trust. He testified that he had a standing investment program whereby his broker should sell any stock that had gained \$3.00 in value and had to sell should the stock gain \$5.00 in value, regardless of whether or not there was some indication the stock would continue to appreciate. On the downside, Claimant's investment program required that his broker should sell a stock that declines \$3.00 in value and must sell should it decline \$5.00 in value, regardless of the possibility of it rebounding in value. Claimant "tightened" his parameters to \$3/2 and then \$2/1 at some time. Claimant received and looked at his

confirmations and monthly statements. He testified he was willing to accept small gains only because his losses would be limited to small amounts. He testified that Brian Fitzgerald, his broker at Smith Barney as well as previously Olde, was well aware of his investment program and desires, and in many cases executed the program. But Claimant complains that in many cases Mr. Fitzgerald did not place limit orders, especially stop orders, and as a result, some of the securities in his account declined much more than \$5.00 in value and that he has lost money as a result of this failure to execute and breach of trust on part of Respondents. Claimant complained, in or about August 2002, about Mr. Fitzgerald's failure to follow his program and met with Fitzgerald and a branch officer in September 2002. He testified that his current representative at Citigroup complies with his program. Claimant expressly does not complain of suitability of securities purchased for his account, or of other matters related to account handling by Respondents.

Respondent Fitzgerald testified that Claimant did indeed at times place limit orders both above and below the purchase price of securities bought for his accounts, but not always, and not always in the same way. He testified that Claimant asked him to monitor the account but he informed Claimant that any orders, limit or otherwise, would have to be at express instructions of Claimant. Respondent testified that he did not have discretion for the account; that Mr. Yarbrough was responsible for instructions on each and every trade in the account; and that when he was instructed to place limit orders he did so. He testified that whenever limit orders were placed, confirmations were generated and sent to Claimant. Similarly, monthly statements generated and sent to Claimant showed any open limit orders that had not been both placed and cancelled/executed in any monthly period.

Mr. Anthony Raimondi of Citigroup testified as to the compilation and analysis of Claimant's accounts at Smith Barney and the documentary evidence generated and entered into the record. He testified that his analysis was complete through November 2004. Claimant's accounts showed an overall appreciation of some \$41,000 during the period in question. Mr. Michael Eddy of Citigroup, Claimant's current representative, testified that he does upon occasion place limit orders pursuant to Claimant's directions, but that limit orders are not placed on every trade in Claimant's account, and that he does not have discretion to trade the account without the Claimant's express instructions.

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 in the amount of \$226,000.00, attorney's fees and costs. Claimant asserted compensable losses on 14 different securities positions in his accounts which, he claims, were incurred due to Mr. Fitzgerald's failure to follow his instructions to place proper limit orders in the accounts. Losses on those 14 positions totaled over \$226,000.00. That is the amount Claimant seeks to recover. Claimant pointed out that he did suffer losses on many other securities positions, but he is not claiming those losses resulted from the failure of Respondents to comply with his standing instructions regarding limit orders.

Respondents requested that the Statement of Claim be dismissed in its entirety and an award of fees and expenses, including forum fees and costs of this proceeding. In addition, Respondents requested that the Panel enter an order expunging this matter from the NASD Central Registration Depository (the "CRD") record of Respondent Fitzgerald.

OTHER ISSUES CONSIDERED AND DECIDED

On March 30, 2006, the Panel entered an Order stating that they would defer ruling on Respondents' Motion to Dismiss and Request for Sanctions until the evidentiary hearings are held for this matter.

Claimant did not produce timely the information required by NASD notice to members 99-90 and requested by Respondents, and the Chair issued an Order in December 2004 that that information be produced forthwith. It was not, and Respondents filed a motion to compel discovery and a request for sanctions and dismissal. Claimants produced some tax returns and a financial statement, but never produced information regarding prior or contemporaneous securities accounts other than with Respondents. The Respondents motion was considered at the hearing. Since the information not produced did not appear to be critical to resolution of the case, the panel denied the motion to compel, request for dismissal and request for sanctions.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten 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:

Respondents are found not liable and all Claimant's claims are dismissed in their entirety. Claimant has not shown specific failures of Respondents to comply with specific instructions of Claimant, nor the specific losses that proximately resulted. Claimant's damages evidence is taken from Respondents' account analyses, and the panel notes that out of the 14 securities for which losses are claimed, 7 are still open positions and the securities were in Claimant's account at least as of the end of November 2004. No more up-to-date information or evidence was submitted. Claimant has realized no losses on the 7 positions, and Claimant made no tender of those positions to Respondent. All evidence makes clear that Claimant placed a number of limit orders in this account, some of those orders were canceled shortly after placement, others were executed and the status of still others are unclear. The panel is unable to determine in any case whether a specific failure of Respondents resulted in a specific dollar loss to Claimant. As a result, Claimant is not entitled to recover anything from Respondents. The parties shall bear their own costs and expenses of this action. All forum fees assessed in excess of those already paid to NASD by Claimant and Respondents respectively are assessed against Claimant. The panel declines to expunge Respondent Fitzgerald's NASD CRD record.

Any and all claims for relief not specifically addressed herein, including Claimant's request for attorney's fees, are 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 events giving rise to the dispute. Accordingly, Citigroup is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge = \$1,700.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$2,750.00

Total Member Fees = \$5,200.00

Adjournment Fees

There were no requests for adjournments filed in this matter for which fees were assessed.

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 cancellation fees were assessed in this matter.

Injunctive Relief Fees

No injunctive relief fees were incurred during this proceeding.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: December 1, 2005 1 session

One (1) Pre-hearing session with the Panel @ \$1,125.00 = \$1,125.00
Pre-hearing conference: May 17, 2005 1 session

Four (4) Hearing sessions with the Panel @ \$1,125.00 = \$4,500.00
Hearing Dates: April 4, 2006 2 sessions

April 5, 2006 2 sessions

Total Forum Fees = \$6,075.00

The Panel has assessed the total forum fees of \$6,075.00 to Claimant.

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.

No administrative costs were incurred during this proceeding.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$ 300.00
<u>Forum Fees</u>	= \$ 6,075.00
Total Fees	= \$ 6,375.00
<u>Less payments</u>	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 4,950.00

Respondent Citigroup is solely liable for:

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

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

ARBITRATION PANEL

Robert H. Putnam, Jr., Esq.	-	Public Arbitrator, Presiding Chairperson
Charles H. McCain	-	Public Arbitrator
Tom G. Gambill, Ph.D.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Robert H. Putnam, Jr., Esq.
Public Arbitrator, Presiding Chairperson

04/11/06
Signature Date

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/s/
Charles H. McCain
Public Arbitrator

04/11/06
Signature Date

/s/
Tom G. Gambill, Ph.D.
Non-Public Arbitrator

04/12/06
Signature Date

04/12/06
Date of Service (For NASD Dispute Resolution office use only)

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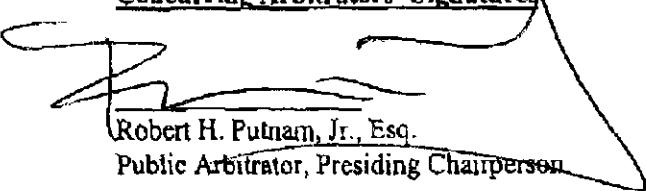
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Public Arbitrator



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