

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 04-08508

Richard L. Davis (Claimant) v. Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc.
(Respondent)

ATTORNEYS:

For Claimant Richard L. Davis ("Claimant") appeared Jan Graham, Esq., Jan Graham Law
Offices, Salt Lake, City, UT.

For Respondent Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc.
("Respondent") appeared A. Jamie Schupp, Esq., Neal, Gerber & Eisenberg, Chicago, IL.

NATURE OF DISPUTE: Customer vs. Member.

DATE FILED: December 14, 2004.

CASE SUMMARY: Claimant alleged that Respondent, through its agent Jack Grubman and his
securities analyst reports, violated fraud provisions of Idaho securities laws, committed common
law fraud, breached a fiduciary duty to Claimant and made unsuitable sales of securities to
Claimant. Claimant maintained that due to Respondent's actions, his account suffered losses.
Claimants claim involved shares of WorldCom stock.

ARBITRATOR'S REPORT: See attached.

Claim Data

Claim: \$8,355.56
Punitive: \$16,000.00
Interest: \$3,224.76
Attorney Fees: 40% of total award
Filing Fees: Unspecified
Other: Unspecified

Award Data

Award: \$0.00
Punitive: \$0.00
Interest: \$0.00
Attorney Fees: \$0.00
Filing Fees: \$212.50
Other: \$0.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of
the issues submitted for determination as follows: 1) The claims of Claimant are dismissed in
their entirety. 2) All requests for punitive damages are denied. 3) All requests for interest are
denied. 4) All requests for attorney fees are denied. 5) All other relief requests are denied. 6)
NASD Dispute Resolution shall retain the \$425.00 filing fee that the Claimant deposited
previously. 7) Respondent is liable and shall pay Claimant \$212.50 as reimbursement of one-
half of the filing fee.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent has paid to NASD Dispute
Resolution the \$425.00 Member Surcharge previously invoiced.

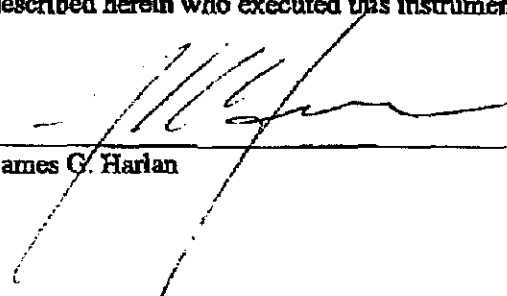
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James G. Harlan

Sole Public Arbitrator

AFFIRMATION

I, James G. Harlan, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


James G. Harlan


Signature Date

June 3, 2005

Date of Service (For NASD-DR office use only)

ATTACHMENT

I have reviewed the claim, response and final briefings in this matter along with the exhibits. I have decided that the claims against CitiGroup Global Markets, Inc., fka Salomon Smith Barney Inc., must be dismissed in their entirety.

The Claimant does establish that he purchased shares of WorldCom, Inc. through Respondent CitiGroup. The Claimant further establishes that the price of WorldCom, Inc. stock dropped to such an extent the Respondent's entire investment was lost. Claimant fails to establish that Respondent CitiGroup, through its analyst Jack Grubman, is responsible for the loss.

Claimant bases his allegations on fraud, arguing that Respondent failed to disclose an incestuous relationship between Grubman and WorldCom, Inc. Claimant argues that Grubman, eager to please WorldCom in order to attract investment banking business for Respondent CitiGroup, provides less than candid analysis of WorldCom's economic performance. Claimant alleges that he relied on Grubman's reports to induce him to invest in WorldCom, Inc. Claimant provides no evidence to support his allegation of reliance.

Further, Claimant provides no evidence that Grubman lied in his analysis of WorldCom. Was Grubman wrong in his analysis? Yes, definitely. But no evidence is produced that shows Grubman lied. Indeed, one of the exhibits supplied by Claimant states that the reason Grubman's activities in connection with WorldCom is not included in a settlement agreement with securities regulators is because there was no evidence that Grubman did not believe what he was reporting about WorldCom. Liability does not attach for being wrong on a securities analysis report.

Claimant's second theory of fraud is that Respondent CitiGroup failed in its obligation to provide full disclosure regarding its relationship with WorldCom. Fraud by omission. Claimant does provide a rather lengthy hypothetical disclosure that could have arguably put Claimant on notice and saved Respondent from allegations of fraud. But this hypothetical is a classic of retrospective analysis and ignores the fact that the disclosures that Respondent and Grubman did provide at the time met the requirements of securities regulations and regulators. To ask more now is unrealistic and is tantamount to an *ex post facto* application of law. It should be noted in passing that the evidence Claimant relies upon, Settlement Agreements and interim reports of bankruptcy examiners, are for the most part inadmissible to prove the claims. Other evidence provided, e-mail declarations of retail sales staff attacking the analyses of Grubman, comes after the sales and ignores the fact that while the telecommunication securities market bubble was rising, Grubman was the fair-haired boy in the retail market. It is only after the bubble bursts, that Grubman is vilified.

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Claimant further alleges breach of fiduciary duty, but provides no evidence that a fiduciary relationship existed between the parties in connection with the WorldCom transactions. It appears that Claimant made the investment decisions, not representatives or Respondent. Finally, Claimant alleges unsuitable investments, but provides absolutely no argument or evidence in support of the allegation.

Claimant suffered real harm. Part of the harm is attributed to a hyper-inflated market expectation and most of the harm is caused by WorldCom, Inc. massive accounting fraud. The Claimant has failed to show that any of the harm is the result of actions of Respondent CitiGroup.