

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

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In the Matter of the Arbitration Between:

Name of Claimant

Daniel G. Brandon

vs.

Case Number: 05-00474  
Hearing Site: Dallas, Texas

Names of Respondents

Citigroup Global Markets, Inc. and  
Roger L. Metz

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**NATURE OF THE DISPUTE**

Customer vs. Member and Associated Person

**REPRESENTATION OF PARTIES**

Daniel G. Brandon ("Claimant") was represented by Paul B. Westbrook, Esq., Harris, Finley & Bogle, Fort Worth, Texas.

Citigroup Global Markets, Inc. ("Citigroup") and Roger L. Metz ("Metz"), hereinafter collectively referred to as "Respondents," were represented by Kenneth M. Krock, Esq., Haynes and Boone, LLP, Houston, Texas.

**CASE INFORMATION**

The Statement of Claim was filed on or about January 28, 2005. The Submission Agreement of Claimant was signed on or about January 8, 2005.

The Statement of Answer was filed jointly by Respondent Citigroup and Metz on or about April 8, 2005. The Submission Agreement of Respondent, Citigroup, was signed on or about March 8, 2005. The Submission Agreement of Respondent, Metz, was signed on or about March 9, 2005.

The Motion to Dismiss was filed by Respondents on or about March 8, 2006.  
The Response to Respondents' Motion to Dismiss was filed by Claimant on or about March 20, 2006.

The Pre-Hearing Arbitration Brief was filed by Claimant on or about April 21, 2006.  
The Pre-Hearing Arbitration Brief was filed by Respondents on or about April 21, 2006.

The Notice of Dismissal of Roger L. Metz was filed by Claimant on or about May 15, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty; negligence; fraud; and control person liability for Citigroup. The causes of action related to the recommendation and failure to sell shares of common stock Claimant acquired through his employment. As alleged in the Statement of Claim, when Claimant inquired about the stock, Metz discouraged the sale of the stock and held the stock in a margin account. At the same time Metz was discouraging the sale, Citigroup was selling shares to satisfy the margin account balance. In addition, the value of the stock declined in value and quantity.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant's claims are barred by the doctrines of waiver, ratification and estoppel; Claimant's damages, if any, were not proximately caused by any action by Respondents; Claimant's alleged damages are speculative and not legally cognizable; Claimant failed to take reasonable steps to mitigate or avoid damages; Claimant is not entitled to recover attorneys' fees and/or punitive damages under applicable law; Respondents acted in good faith and without malice or reckless indifference to Claimant; Claimant's damages, if any, must be determined by the out-of-pocket loss rule; Respondents' actions comported with all applicable laws, rules and industry standards in effect at the time; Claimant's damages, if any, were caused by the intervening acts of third parties or by the acts of Claimant himself or by a market driven decline for which Respondents are not responsible; Claimant's claims of negligence, if legally cognizable, would be barred by the doctrine of contributory negligence; Claimant's claims are barred, in whole or in part; by the applicable statute of limitations; Claimant failed to notify Respondents of any complaint with his account and thus is barred from asserting a claim here; Claimant is not entitled to seek tort damages in the absence of personal injury or property damage; and Claimant cannot prove each of the elements of his claims.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of:

Actual/Compensatory Damages	\$4,300,000.00
Interest	Unspecified
Attorneys' Fees	Unspecified
Other Costs	Unspecified
Other Monetary Relief	Unspecified

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

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

On March 23, 2006, the Panel heard counsel discuss the issues of the Motion to Dismiss. The parties stipulated to, and the Panel ordered, that the claim be narrowed by elimination of the negligence claim and the fraud claim under Section 10b-5 of the Securities Exchange Act of 1934.

On or about May 15, 2006, Claimant filed a Notice dismissing with prejudice the claims asserted against Roger L. Metz.

At the hearing, Respondent Citigroup moved to dismiss the claims at the conclusion of the Claimant's case. The Panel denied the Motion after hearing argument.

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

- 1.) Claimant's claims against Citigroup Global Markets, Inc., each and all, are hereby denied and dismissed with prejudice;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 3.) The Panel recommends the expungement of all references to the above captioned arbitration from Respondent, Roger L. Metz's, registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent, Roger L. Metz, 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 of 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 Panel has made the following affirmative findings of fact:

The claim, allegation, or information is factually impossible or clearly erroneous; and

- 4.) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial Claim filing fee	= \$	600.00
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#### **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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Citigroup Global Markets, Inc.

Member surcharge	= \$	2,800.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	5,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings:

May 22-26, 2006, adjournment requested by Claimant	= \$	1,200.00
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The Adjournment Fee was waived by the Panel.

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

The Panel has assessed forum fees for each hearing 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 x \$1,200.00 = \$ 2,400.00

Pre-hearing conferences: July 13, 2005 1 session  
March 23, 2006 1 session

Six (6) Hearing sessions x \$1,200.00 = \$ 7,200.00

Hearing Dates: January 23, 2007 2 sessions  
January 24, 2007 2 sessions  
January 25, 2007 2 sessions

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Total Forum Fees = \$ 9,600.00

The Panel has assessed \$4,800.00 of the forum fees to Daniel G. Brandon.

The Panel has assessed \$4,800.00 of the forum fees to Citigroup Global Markets, Inc.

### **FEE SUMMARY**

Claimant, Daniel G. Brandon, is liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 4,800.00
Total Fees	= \$ 5,400.00
Less payments	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

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

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 4,800.00
Total Fees	= \$ 13,350.00
Less payments	= \$ 9,150.00
Balance Due NASD Dispute Resolution	= \$ 4,200.00

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

**ARBITRATION PANEL**

Philip C. Crouse- Public Arbitrator, Presiding Chair  
Edmund R. Yates, Esq. - Public Arbitrator  
Chester E. Young - Non-Public Arbitrator

Concurring Arbitrators' Signatures:

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Philip C. Crouse  
Public Arbitrator, Presiding Chair

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Signature Date

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Edmund R. Yates, Esq.  
Public Arbitrator

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Signature Date

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Chester E. Young  
Non-Public Arbitrator

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Signature Date

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Date of Service (For NASD office use only)

**ARBITRATION PANEL**

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Edmund R. Yates, Esq. - Public Arbitrator  
Chester E. Young - Non-Public Arbitrator

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Philip C. Crouse

Philip C. Crouse  
Public Arbitrator, Presiding Chair

1/30/2007  
Signature Date

Edmund R. Yates, Esq.  
Public Arbitrator

Signature Date

Chester E. Young  
Non-Public Arbitrator

Signature Date

2/7/07  
Date of Service (For NASD office use only)

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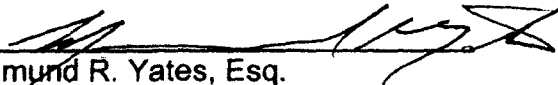
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Philip C. Crouse  
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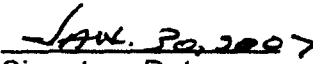
Signature Date

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Edmund R. Yates, Esq.  
Public Arbitrator

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Signature Date

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Chester E. Young  
Non-Public Arbitrator

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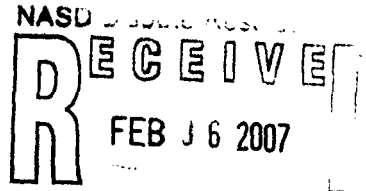
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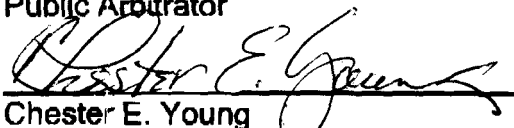
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Public Arbitrator, Presiding Chair

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Signature Date

2/7/07 Mm  
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