

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

---

In the Matter of the Arbitration Between:

Marvin Gale, M.D. and Elaine H. Cohen-Gale, M.D., individually and as Trustees of the Gale Living Trust, and Elaine H. Gale as the ACF of the Pamela Gale U/CA/UTMA, Claimants v. Citigroup Global Markets Inc. f/k/a Salomon Smith Barney, Inc. and Martin B. Stocklan, Respondents

Case Number: 05-00734

Hearing Site: San Diego, California

---

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

**REPRESENTATION OF PARTIES**

For Claimants:

Floyd R. Brown, Esq.  
Law Offices of Floyd R. Brown  
Carlsbad, California

For Respondents:

Stacey M. Garrett, Esq.  
Cary D. Sullivan, Esq.  
Keesal, Young & Logan  
Long Beach, California

**CASE INFORMATION**

Statement of Claim filed: February 8, 2005

First Amended Statement of Claim filed: June 7, 2005

Amended Prayer for Damages filed: February 16, 2006

Second Amended Prayer for Damages filed: April 12, 2006

Claimants' Joint Uniform Submission Agreement signed: March 8, 2005

Joint Statement of Answer filed by Respondents: May 13, 2005

Joint Statement of Answer to First Amended Statement of Claim filed by Respondents:  
June 20, 2005

Respondent Citigroup Global Markets Inc. f/k/a Salomon Smith Barney, Inc.'s ("Citigroup Global Markets Inc.") Uniform Submission Agreement signed: April 25, 2005

Respondent Martin B. Stocklan's Uniform Submission Agreement signed: May 3, 2005

### **CASE SUMMARY**

In the Statement of Claim, Claimants alleged fraudulent misrepresentation, negligence, breach of fiduciary duty in violation of California Civil Code Section 2322(c), and violation of NYSE Rule 405, involving unspecified securities.

In the First Amended Statement of Claim, Claimants added the allegation of breach of contract.

Respondents denied the allegations of wrongdoing set forth in the Claimants' Statement of Claim and First Amended Statement of Claim, and asserted various affirmative defenses.

### **RELIEF REQUESTED**

In the Statement of Claim and First Amended Statement of Claim, Claimants requested \$1,000,000.00 in compensatory damages, unspecified punitive damages, pre- and post-award interest, and costs, including filing fees, hearing fees, copying fees, expert witness fees, and attorney's fees.

In the Amended Prayer for Damages, Claimants increased their request for compensatory damages to \$1,711,206.00. In the Second Amended Prayer for Damages, Claimants decreased their request for compensatory damages to \$1,691,776.00.

Respondents requested dismissal of the Claimants' Statements of Claim in their entirety, expungement of this matter from the registration record of Respondent Martin B. Stocklan, and costs, including arbitrators' fees and expenses.

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

On January 20, 2005, Claimants and Claimants' counsel 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.

Pursuant to the Code of Arbitration Procedure IM-10100, the waiver of the Claimants shall constitute and operate as a waiver for all member firms and associated persons (including

terminated or otherwise inactive member firms or associated persons) against whom the Claim has been filed.

On June 7, 2005, Claimants filed an Amended Statement of Claim pursuant to the NASD Code of Arbitration Procedure Rule 10328(a).

On July 19, 2005, Respondents filed a Motion to Compel Claimants' Production of Documents and Information. On August 1, 2005, the Panel and parties held a telephonic pre-hearing conference, and the Panel ordered Claimants to produce outstanding discovery on or before August 15, 2005. On August 31, 2005, Claimants filed a Response to Respondents' Motion to Compel. On September 1, 2005, Respondents filed a Response to Claimants' Response regarding the Motion to Compel. After due deliberation, the Panel issued an Order on September 5, 2005 stating the following:

The panel is of the opinion that the claimants have not complied with its order to produce within the time frame prescribed. It is also felt that the claimants' reply to respondents' motion to compel is inadequate and offers no objections to the requests for documents by respondents.

Therefore, it is Ordered that the complainants pay a monetary sanction of \$500.00 plus attorney's fees of \$500.00. These amounts to be paid within thirty (30) days.

On February 16, 2006, Claimants filed an Amended Prayer for Damages, increasing the request for compensatory damages to \$1,711,206.00. On February 23, 2006, Respondents filed a response to Claimants' Amended Prayer for Damages. On February 28, 2006, the Panel issued an Order stating that the Claimants' Amended Prayer for Damages is allowed.

On April 12, 2006, Claimants filed a Second Amended Prayer for Damages, decreasing the request for compensatory damages to \$1,691,776.00. At the evidentiary hearing, the Panel ruled that the Second Amended Prayer for Damages is allowed.

At the evidentiary hearing, Respondents brought an oral motion to disallow testimony by an expert witness. Claimants verbally opposed Respondents' motion. After due deliberation, the Panel denied Respondents' motion.

At the evidentiary hearing, Respondents brought an oral motion for dismissal of Claimants' claims in their entirety. Claimants verbally opposed Respondents' motion. After due deliberation, the Panel denied Respondents' motion for dismissal.

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

- 1) Respondent Citigroup Global Markets Inc. is liable to and shall pay Claimants the sum of \$50,000.00 in compensatory damages.
- 2) The parties shall bear their respective costs, including attorney's fees.
- 3) 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 | = \$ 500.00 |
|--------------------------|-------------|

#### **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. is a party and the following fees are assessed:

|                          |                      |
|--------------------------|----------------------|
| Member Surcharge         | = \$ 2,800.00        |
| Pre-Hearing Process Fee  | = \$ 750.00          |
| Hearing Process Fee      | = \$ 5,000.00        |
| <b>Total Member Fees</b> | <b>= \$ 8,550.00</b> |

### **Forum Fees and Assessments**

The Panel 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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

|  |                      |
|--|----------------------|
| 1 Decision on discovery-related motions on the papers with one arbitrator @ \$200.00 | = \$ 200.00          |
| Respondent submitted one discovery-related motion                                    |                      |
| 4 Pre-hearing conference sessions with the Panel @ \$1,200.00/session                | = \$ 4,800.00        |
| Pre-hearing conferences:   |                      |
| July 14, 2005  | 1 session            |
| August 1, 2005   | 1 session            |
| October 25, 2005   | 1 session            |
| January 18, 2006   | 1 session            |
| 9 Hearing sessions @ \$1,200.00/session  | = \$10,800.00        |
| Hearings:  |                      |
| April 17, 2006   | 2 sessions           |
| April 18, 2006   | 2 sessions           |
| April 19, 2006   | 2 sessions           |
| April 20, 2006   | 2 sessions           |
| April 21, 2006   | 1 session            |
| <b>Total Forum Fees</b>  | <b>= \$15,800.00</b> |

1. The Panel assessed \$11,850.00 of the forum fees jointly and severally to Claimants.
2. The Panel assessed \$3,950.00 of the forum fees to Respondent Citigroup Global Markets Inc.

### **Fee Summary**

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

|  |                        |
|--|------------------------|
| Initial Filing Fee                         | = \$ 500.00            |
| <u>Forum Fees</u>                          | <u>= \$11,850.00</u>   |
| Total Fees                                 | = \$12,350.00          |
| <u>Less payments</u>                       | <u>= \$( 1,800.00)</u> |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$10,550.00</b>   |
2. Respondent Citigroup Global Markets Inc. is charged with the following fees and costs:

|  |                        |
|--|------------------------|
| Member Fees                                | = \$ 8,550.00          |
| <u>Forum Fees</u>                          | <u>= \$ 3,950.00</u>   |
| Total Fees                                 | = \$12,500.00          |
| <u>Less payments</u>                       | <u>= \$( 7,000.00)</u> |
| <b>Balance Due NASD Dispute Resolution</b> | <b>= \$ 5,500.00</b>   |

NASD Dispute Resolution

Arbitration No. 05-00734

Award Page 6 of 7

---

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.

NASD Dispute Resolution  
Arbitration No. 13-06754  
Award Page 7 of 7

**ARBITRATION PANEL**

|                    |   |                                    |
|--------------------|---|------------------------------------|
| E. Milton Frosburg | - | Public Arbitrator, Presiding Chair |
| Paul J. Sipe       | . | Public Arbitrator                  |
| Jeremy J. Offeyer  | - | Non-Public Arbitrator              |

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
E. Milton Frosburg  
Chair, Public Arbitrator

*E. Milton Frosburg* 4/24/06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Paul J. Sipe  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Jeremy J. Offeyer  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

4/25/06  
Date of Service

**ARBITRATION PANEL**

|                    |   |                                    |
|--------------------|---|------------------------------------|
| E. Milton Frosburg | - | Public Arbitrator, Presiding Chair |
| Paul J. Sipe       | - | Public Arbitrator                  |
| Jeremy J. Ofseyer  | - | Non-Public Arbitrator              |

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
E. Milton Frosburg  
Chair, Public Arbitrator

  
\_\_\_\_\_  
Paul J. Sipe  
Public Arbitrator

\_\_\_\_\_  
Jeremy J. Ofseyer  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

4-25-06  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Signature Date

4/25/06  
\_\_\_\_\_  
Date of Service



**ARBITRATION PANEL**

|                    |   |                                    |
|--------------------|---|------------------------------------|
| E. Milton Frosburg | - | Public Arbitrator, Presiding Chair |
| Paul J. Sipe       | - | Public Arbitrator                  |
| Jeremy J. Ofseyer  | - | Non-Public Arbitrator              |

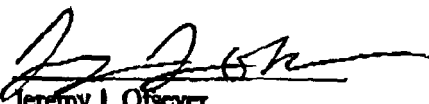
**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
E. Milton Frosburg  
Chair, Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Paul J. Sipe  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
Jeremy J. Ofseyer  
Non-Public Arbitrator

4/24/06  
Signature Date

4/25/06  
Date of Service