

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

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In the Matter of the Arbitration Between:

Name of Claimant

Joseph S. Manzi, Trustee, FBO  
Joseph S. Manzi Trust UAD 9/30/94

Case Number: 05-02228

Names of Respondents

Citigroup Global Markets, Inc. f/k/a  
Salomon Smith Barney, Inc.  
Michael Freitag

Hearing Site: Tampa, Florida

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

**REPRESENTATION OF PARTIES**

For Joseph S. Manzi, Trustee, FBO Joseph S. Manzi Trust UAD 9/30/94, hereinafter referred to as "Claimant": J. Anklowitz, Esq., Law Offices of J. Anklowitz, Bohemia, New York.

For Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., hereinafter referred to as "Respondent Citigroup": Raul Sanchez, Esq., Associate General Counsel, Citigroup Global Markets, Inc. f/k/a Salomon Smith Barney, Inc., New York, New York.

For Michael Freitag, hereinafter referred to as "Respondent Freitag": Michael J. Stanton, Esq., Gray Robinson, Tampa, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: March 1, 2005.

Claimant signed the Uniform Submission Agreement on: April 20, 2005.

Statement of Answer filed by Respondents Citigroup and Freitag on or about: June 21, 2005.

Respondent Citigroup signed the Uniform Submission Agreement on: June 20, 2005.

Respondent Freitag did not file an executed Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) unsuitability; 2) negligence; 3) fraud/misrepresentation; and, 4) breach of contract. These causes of action relate to Claimant's investment in a derivative product called TARGETS Trust VIII based on the price of EMC stock.

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: 1) compensatory damages in the amount of \$79,203.34; 2) unspecified punitive damages; 3) interest in the amount of \$28,513.20; 4) forum fees in the amount of \$975.00; 5) attorneys' fees in the amount of \$35,000.00; 6) witness and production costs in the amount of \$5,000.00; and, 7) other case-related costs in the amount of \$2,500.00.

Respondents requested that the Panel: 1) dismiss the Statement of Claim in its entirety; 2) award to Respondents their fees and expenses, including forum fees and all other costs of this proceeding; and, 3) direct expungement of all references to this proceeding from Respondent Freitag's registration records maintained by the NASD Central Registration Depository ("CRD").

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

Respondent Freitag did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("the Code") and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

On or about October 12, 2005, Claimant filed with NASD Dispute Resolution a Notice of Dismissal With Prejudice of Respondent Freitag from the above referenced matter.

At the evidentiary hearing, Respondent Citigroup renewed Respondent Freitag's request for expungement of all references to this proceeding from Respondent Freitag's registration records maintained by the NASD CRD.

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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent Citigroup is liable on the claim of negligence and shall pay to Claimant compensatory damages in the amount of \$26,800.00, plus interest at the rate of 5% per annum which shall accrue from February 4, 2004, until the date of service of the Award.
2. Claimant's requests for punitive damages, costs and attorneys' fees are denied.
3. Respondent Freitag's request for expungement is denied.
4. Any and all claims for relief not specifically addressed herein 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	= \$ 225.00
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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 person at the time of the events giving rise to the dispute. Accordingly, Respondent Citigroup is a party and a member firm.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00
Total Member Fees	= \$3,550.00

### **Adjournment Fees**

*Adjournments granted during these proceedings for which fees were assessed:*

There were no adjournments requested during these proceedings 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:

There were no three-day cancellation fees assessed during these proceedings.

### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

There were no injunctive relief fees assessed during these proceedings.

### **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:

One (1) Pre-hearing session with Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: September 8, 2005	1 session

Two (2) Hearing sessions @ \$750.00/session = \$1,500.00  
Hearing Dates: July 11, 2006 2 sessions

Total Forum Fees = \$2,250.00

The Panel has assessed the total forum fees in the amount of \$2,250.00 to Respondent Citigroup.

### **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 are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred during these proceedings.

### **Fee Summary**

Claimant is solely liable for:

<u>Initial Filing Fee</u>	= \$ 225.00
<u>Total Fees</u>	= \$ 225.00
<u>Less payments</u>	= \$ 225.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent Citigroup is solely liable for:

<u>Member Fees</u>	= \$ 3,550.00
<u>Forum Fees</u>	= \$ 2,250.00
<u>Total Fees</u>	= \$ 5,800.00
<u>Less payments</u>	= \$ 3,550.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 2,250.00

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

### **ARBITRATION PANEL**

Horace A. Andrews, Esq.	-	Public Arbitrator, Presiding Chairperson
Aaron Martin Nisenson, Esq.	-	Public Arbitrator
John J. Meyers	-	Non-Public Arbitrator

### **Concurring Arbitrators' Signatures**

/s/ \_\_\_\_\_  
Horace A. Andrews, Esq.  
Public Arbitrator, Presiding Chairperson

July 22, 2006  
Signature Date

/s/  
Aaron Martin Nisenson, Esq.  
Public Arbitrator

July 24, 2006  
Signature Date

/s/  
John J. Meyers  
Non-Public Arbitrator

July 24, 2006  
Signature Date

July 25, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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 Horace A. Andrews, Esq.  
 Public Arbitrator, Presiding Chairperson

7/22/06  
 Signature Date

07/20/2007 09:23

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Aaron Martin Nisenson, Esq.  
Public Arbitrator

7-24-06  
Signature Date

\_\_\_\_\_  
John J. Meyers  
Non-Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution office use only)

Aaron Martin Nisenson, Esq.  
Public Arbitrator

Signature Date

John J. Meyers  
John J. Meyers  
Non-Public Arbitrator

7/24/06  
Signature Date

Date of Service (For NASD Dispute Resolution office use only)