

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

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In the Matter of the Arbitration Between

Claimant/Counter-Respondent

BOSC, Inc.

and

Case Number: 05-04061

Hearing Site: Oklahoma City, Oklahoma

Respondents/Counter-Claimant

Citigroup Global Markets, Inc., individually and  
d/b/a Smith Barney, an unincorporated division  
and service mark of Citigroup Global Markets, Inc.,  
and Jeffrey R. Thompson

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**NATURE OF DISPUTE**

*Member Firm vs. Member Firm and Associated Person and Member Firm vs. Member Firm*

**REPRESENTATION OF PARTIES**

BOSC, Inc. ("BOSC" or "Claimant") was represented by Paul DeMuro, Esq., Frederic Dorwart, Lawyers, Tulsa, Oklahoma.

Citigroup Global Markets, Inc., individually and d/b/a Smith Barney, an unincorporated division and service mark of Citigroup Global Markets, Inc., ("Citigroup") and Jeffrey R. Thompson ("Thompson"), hereinafter collectively referred to as "Respondents," were represented by Lewis Carter, Esq., Doerner & Saunders, Tulsa, Oklahoma.

**CASE INFORMATION**

The Statement of Claim was filed on or about August 5, 2005. The Submission Agreement of Claimant was signed by Teresa Harrell on or about August 4, 2005.

A Statement of Answer was filed jointly by Respondents, Citigroup and Thompson, on or about August 16, 2005. The Submission Agreement of Citigroup was signed on or about August 15, 2005 by Dina S. Venero. The Submission Agreement of Thompson was signed on or about August 11, 2005.

Citigroup's Counterclaim was filed on or about September 29, 2005.

Claimant's Response to the Citigroup's Counterclaim was filed on or about October 10, 2005.

Claimant's Motion to Dismiss, or for Summary Adjudication, Citigroup's Counterclaim was filed on or about January 17, 2006.

Citigroup's Response to Claimant's Motion to Dismiss, or for Summary Adjudication, their Counterclaim, was filed on or about January 30, 2006.

Claimant's Motion to Correct Name of Respondent, Citigroup, was filed on or about January 30, 2006.

Respondents' Response to Claimant's Motion to Correct Name of Respondent, Citigroup Global Markets, Inc., was filed on or about February 3, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract; violation of Oklahoma's Uniform Trade Secrets Act; tortious interference with business interests and contractual rights; conspiracy; and unfair competition. Claimant alleged that Respondent Thompson failed to honor his obligations pursuant to the BOSC agreement by not giving a thirty (30) day written notice of termination and solicited BOSC customers prior to the one (1) year anniversary of his termination.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: BOSC is barred from any recovery by virtue of the "unclean hands" doctrine; BOSC should additionally be barred from any recovery under the "unclean hands" doctrine by virtue of its misrepresentations that were communicated to Thompson's customers regarding their ability to withdraw money from seven (7) year certificates of deposit without an early-withdrawal penalty; and BOSC should additionally be barred from any recovery because it is attempting to interfere with business relationships established between Citigroup and certain of its customers.

In its Counterclaim, Citigroup alleged that BOSC has tortiously interfered with Smith Barney's present and anticipated business relationships with its clients and then attempted to conceal its interference.

BOSC denied the allegations made in the Counterclaim, and asserted defenses including the following: because the Counterclaim failed to allege the essential elements of such a claim and therefore failed to state a claim upon which relief can be granted, the Arbitration Panel should dismiss the Counterclaim. Also, BOSC alleged that Smith Barney's Counterclaim was submitted untimely pursuant to NASD Rule 10314.

### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$330,000.00 in compensatory damages, \$330,000.00 in punitive damages, interest, costs and attorneys' fees and for other relief as the Panel deemed just and proper. Claimant also requested that the Panel grant temporary and permanent injunctive relief as granted by the State's Court Order.

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

In its Counterclaim, Citigroup requested that the Panel award it damages in an amount to be determined at the hearing, and other relief the panel deemed just and proper.

BOSC requested that the Panel dismiss the Counterclaim with prejudice, and award costs and attorneys' fees and other relief the Panel deemed just and proper.

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

On or about September 9, 2006, the Panel entered an Order granting Claimant's Request for Permanent Injunction.

On or about February 1, 2006, the Panel entered an Order denying Claimant's Motion to Dismiss or for Summary Adjudication Citigroup's Counterclaim.

On February 13, 2006, the Panel heard the Claimant's Motion To Correct Name Of Respondent Citigroup Global Markets, Inc., dated 01/30/2006, together with Respondents' Response to Claimant's Motion to Correct Name of Respondent Citigroup Global Markets, Inc. The Panel granted the motion and ordered the Respondents realigned and named as follows:

"Citigroup Global Markets, Inc., individually and d/b/a Smith Barney, an unincorporated division and service mark of Citigroup Global Markets, Inc., and Jeffrey R. Thompson."

The Injunctive Order entered by the Panel will remain in full force and effect per the terms of the Order.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Citigroup Global Markets, Inc., individually and d/b/a Smith Barney, an unincorporated division and service mark of Citigroup Global Markets, Inc., and Jeffrey R. Thompson, are jointly and severally liable for and shall pay to Claimant, BOSC, Inc., the sum of \$153,903.00 (One Hundred Fifty-Three Thousand Nine Hundred Three Dollars) as compensatory damages;
- 2) Citigroup Global Markets, Inc., individually and d/b/a Smith Barney, an unincorporated division and service mark of Citigroup Global Markets, Inc., and Jeffrey R. Thompson, are jointly and severally liable for and shall pay to Claimant, BOSC, Inc., the sum of \$225,000.00 (Two Hundred Twenty-Five Thousand Dollars) in punitive damages pursuant to Oklahoma's Uniform Trade Secrets Act ("UTSA") @ 78 O.S. 88 and 23 O.S. 9.1;
- 3) Citigroup Global Markets, Inc., individually and d/b/a Smith Barney, an unincorporated division and service mark of Citigroup Global Markets, Inc., and Jeffrey R. Thompson, are jointly and severally liable for and shall to pay to Claimant, BOSC, Inc., the sum of \$80,000.00 (Eighty Thousand Dollars) as attorneys' fees and costs pursuant to Paragraph 5.K. of the Representative Agreement between Claimant and Respondent, Jeffrey R. Thompson, and the UTSA @ 78 O.S. 89; and
- 4) Any and all relief not specifically addressed herein is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

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

Initial claim filing fee	= \$1,250.00
Counterclaim file fee	= \$ 500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise

to the dispute. In this matter, the member firms are BOSC, Inc. and Citigroup Global Markets, Inc.

Member surcharge	= \$2,250.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$4,000.00

### **Adjournment Fees**

Adjournments granted during these proceedings:

August 19, 2005 adjournment requested by Respondents	= \$1,200.00
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### **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.

BOSC, Inc. is assessed:

Injunctive relief surcharge	= \$2,500.00
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Citigroup Global Markets, Inc. is assessed:

Additional arbitrator honoraria	= \$1,000.00
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### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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) Decisions on discovery-related motions on the papers with (1) arbitrator @ \$200.00	= \$ 400.00
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Claimant submitted (1) discovery-related motion

Respondents submitted (1) discovery-related motion

One (1) Pre-hearing session with a single arbitrator x \$450.00	= \$ 450.00
Pre-hearing conference: December 19, 2005 1 session	

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00  
Pre-hearing conference: October 3, 2005 1 session

Eleven (11) Hearing sessions x \$1,200.00 = \$13,200.00  
Hearing Dates: September 6, 2005 3 sessions  
February 13, 2006 2 sessions  
February 14, 2006 2 sessions  
February 15, 2006 2 sessions  
February 16, 2006 2 sessions

Total Forum Fees = \$15,250.00

The Arbitration Panel has assessed \$15,250.00 of the forum fees jointly and severally to Citigroup Global Markets, Inc., individually and d/b/a Smith Barney, an unincorporated division and service mark of Citigroup Global Markets, Inc., and Jeffrey R. Thompson.

#### Fee Summary

Claimant, BOSC, Inc., is liable for:

Initial Filing Fee	= \$ 1,250.00
Injunctive Fee	= \$ 2,500.00
Member Fees	= \$ 7,000.00
Total Fees	= \$10,750.00
Less payments	= \$ 7,650.00
Balance Due NASD Dispute Resolution	= \$ 3,100.00

Respondent, Citigroup Global Markets, Inc., individually and d/b/a Smith Barney, an unincorporated division and service mark of Citigroup Global Markets, Inc., is liable for:

Member Fees	= \$ 7,000.00
Counterclaim Filing Fee	= \$ 500.00
Total Fees	= \$ 7,500.00
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 2,300.00

Respondents, Citigroup Global Markets, Inc., individually and d/b/a Smith Barney, an unincorporated division and service mark of Citigroup Global Markets, Inc., and Jeffrey R. Thompson, are jointly and severally liable for:

Adjournment Fee	= \$ 1,200.00
Additional arbitrator honorarium	= \$ 1,000.00
Forum Fees	= \$15,250.00
Total Fees	= \$17,450.00
Less payments	= \$ 0.00

Balance Due NASD Dispute Resolution

= \$17,450.00

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

**ARBITRATION PANEL**

Leslie L. Conner, Jr., Esq. - Public Arbitrator, Presiding Chair  
Kelley L. Cornelius, Esq. - Public Arbitrator  
Glenn E. Johnson - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Leslie L. Conner, Jr., Esq.  
Leslie L. Conner, Jr., Esq.  
Public Arbitrator, Presiding Chair

03/03/06  
Signature Date

/s/ Kelley L. Cornelius, Esq.  
Kelley L. Cornelius, Esq.  
Public Arbitrator

03/03/06  
Signature Date

/s/ Glenn E. Johnson  
Glenn E. Johnson  
Non-Public Arbitrator

03/03/06  
Signature Date

03/03/06  
Date of Service (For NASD office use only)

Balance Due NASD Dispute Resolution

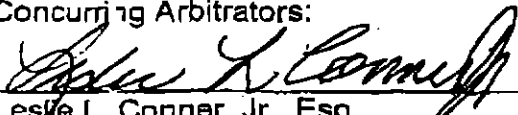
= \$17,450.00

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 0330(g) of the Code.

**ARBITRATION PANEL**

Leslie L. Conner, Jr., Esq. - Public Arbitrator, Presiding Chair  
Kelley L. Cornelius, Esq. - Public Arbitrator  
Glenn E. Johnson - Non-Public Arbitrator

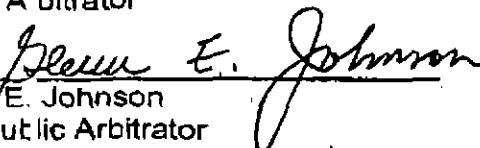
Concurring Arbitrators:

  
Leslie L. Conner, Jr., Esq.  
Public Arbitrator, Presiding Chair

02/03/06  
Signature Date

Kelley L. Cornelius, Esq.  
Public Arbitrator

                      
Signature Date

  
Glenn E. Johnson  
Non-Public Arbitrator

3/3/06  
Signature Date

                      
Date of Service (For NASD office use only)



Balance Due NASD Dispute Resolution

= \$17,450.00

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

**ARBITRATION PANEL**

Leslie L. Conner, Jr., Esq. - Public Arbitrator, Presiding Chair  
Kelley L. Cornelius, Esq. - Public Arbitrator  
Glenn E. Johnson - Non-Public Arbitrator

Concurring Arbitrators:

Leslie L. Conner, Jr., Esq.  
Public Arbitrator, Presiding Chair

Kelley L. Cornelius, Esq.  
Public Arbitrator

Glenn E. Johnson  
Non-Public Arbitrator

Signature Date

3/3/2006  
Signature Date

Signature Date

Date of Service (For NASD office use only)