

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

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In the Matter of the Arbitration Between:

Apparel LTD, LLC, Claimant v. Citigroup Global Markets, Inc., Respondent

Case Number: 05-05107

Hearing Site: Los Angeles, California

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Nature of the Dispute: Customer v. Member

**REPRESENTATION OF PARTIES**

For Claimant:

Steven L. Miller, Esq.  
Law Offices of Steven L. Miller  
Encino, California

For Respondent:

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

**CASE INFORMATION**

Statement of Claim filed: September 13, 2005

Claimant's Uniform Submission Agreement signed: Not dated

Statement of Answer filed by Respondent: November 23, 2005

Respondent's Uniform Submission Agreement signed: November 23, 2005

**CASE SUMMARY**

Claimant alleged breach of contract, breach of implied covenant of good faith and fair dealing, breach of fiduciary duty, negligence, fraud, deceit and omission of material fact, violation of federal and state securities laws, violation of NASD rules, and failure to supervise. Claimant's allegations involve Respondent's alleged failure to sell shares in Colgate, Intel, and Newell and to purchase shares in Sirius Satellite Radio at the opening of the market on November 22, 2004.

Respondent denied the allegations of wrongdoing set forth in Claimant's Statement of Claim.

### **RELIEF REQUESTED**

Claimant requested \$270,250.00 in compensatory damages, unspecified punitive damages, pre-judgment interest at the rate of 10% per annum, and costs, including attorney's fees.

Respondent requested dismissal of the Claimant's Statement of Claim in its entirety and costs, including attorney's fees.

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

During the hearing Frank Epinger requested that the panel recommend expungement of all reference to the above-captioned arbitration from his registration records maintained by the Central Registration Depository. Mr. Epinger was not named as a party to the arbitration but was mentioned in the body of the Statement of Claim as having played a role in the activities leading to Claimant's allegations. Claimant did not object to Mr. Epinger's request. After due deliberation, the Panel granted Mr. Epinger's request for expungement.

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 Claimant Apparel LTD, LLC the sum of \$29,709.00 in compensatory damages.
- 2) The Panel recommends the expungement of all reference to the above-captioned arbitration from Frank Epinger's registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 04-16, Frank Epinger 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 arbitration panel has made the following affirmative

findings of fact: Frank Epinger was not involved in the alleged investment-related sales practice violations.

- 3) The parties shall bear their respective costs, including attorney's fees.
- 4) 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	= \$ 300.00
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#### **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	= \$1,700.00
Pre-Hearing Process Fee	= \$ 750.00
Hearing Process Fee	= \$2,750.00
<b>Total Member Fees</b>	<b>= \$5,200.00</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 arbitrators, including a pre-hearing conference, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00/session	= \$1,125.00
Pre-hearing conference: January 23, 2006 1 session	
Five (5) Hearing sessions @ \$1,125.00/session	= \$5,625.00
Hearings: June 13, 2006 2 sessions	
June 14, 2006 3 sessions	
<b>Total Forum Fees</b>	<b>= \$6,750.00</b>

1. The Panel assessed \$3,375.00 of the forum fees to Claimant Apparel LTD, LLC.

2. The Panel assessed \$3,375.00 of the forum to Respondent Citigroup Global Markets, Inc.

**Administrative Costs**

Administrative costs are expenses incurred because a party requested additional services beyond the normal administrative services. These additional services include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, security, and sundry other requests.

Claimant requested 8 photocopies @ \$0.50/page: = \$ 4.00

**Fee Summary**

1. Claimant Apparel LTD, LLC is charged with the following fees and costs:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 3,375.00
Administrative Costs	= \$ 4.00
<u>Total Fees</u>	<u>= \$ 3,679.00</u>
<u>Less payments</u>	<u>=(1,425.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 2,254.00</b>

2. Respondent Citigroup Global Markets, Inc. is charged with the following fees and costs:

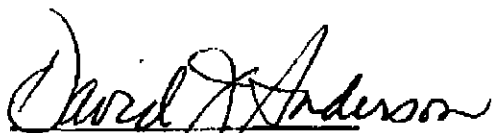
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 3,375.00
<u>Total Fees</u>	<u>= \$ 8,575.00</u>
<u>Less payments</u>	<u>=(5,200.00)</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 3,375.00</b>

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.

**ARBITRATION PANEL**

<b>David J. Anderson</b>	-	<b>Public Arbitrator, Presiding Chair</b>
<b>Mario H. Metzger</b>	-	<b>Public Arbitrator</b>
<b>Michael C. Pocaterra</b>	-	<b>Non-Public Arbitrator</b>

**Concurring Arbitrators' Signatures**

  
David J. Anderson  
Chair, Public Arbitrator

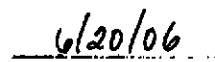
  
Signature Date

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Mario H. Metzger  
Public Arbitrator

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

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Michael C. Pocaterra  
Non-Public Arbitrator

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

  
Date of Service

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David J. Anderson  
Chair, Public Arbitrator

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Signature Date



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Mario H. Metzger  
Public Arbitrator

6/20/06  
Signature Date

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Michael C. Pocaterra  
Non-Public Arbitrator

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