

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

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In the Matter of the Arbitration Between:

Norman R. Fox (individually and as Trustee of the Fox Family Trust and as Custodian of the Norman Fox IRA and Custodian for: Mark R. Wdowicki, John S. Wdowicki, Katie M. Paznokas, and Brian W. Paznokas) and Claire N. Fox (individually and as Trustee of the Fox Family Trust and as Custodian of the Claire N. Fox IRA and Custodian for: Robert Jeffrey Bow, Gregory H. Bow, and Jennifer Nicole Bow), Claimants v. Citigroup Global Markets, Inc., Sheldon D. Freisinger and Joseph E. Clauson, Respondents

Case Number: 05-05635

Hearing Site: San Francisco, California

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

**REPRESENTATION OF PARTIES**

For Claimants:

Thomas J. LoSavio  
Low, Ball & Lynch  
San Francisco, California

For Respondents:

Hugo A. Hilgendorff, IV  
Citigroup Global Markets, Inc.  
New York, New York

**CASE INFORMATION**

Statement of Claim filed: November 3, 2005

Claimants' Uniform Submission Agreements signed: November 25, 2005

Joint Statement of Answer filed by Respondents Citigroup Global Markets, Inc. ("Citigroup"), Sheldon D. Freisinger and Joseph E. Clauson: February 21, 2006

Respondent Citigroup's Uniform Submission Agreement signed: February 17, 2006

**CASE SUMMARY**

Claimants alleged that Respondents failed to manage Claimants' accounts reasonably, kept excessive amounts in cash for extended periods of time, charged unreasonable and excessive fees, breached their fiduciary duties and made misrepresentations and omissions with respect to Claimants' accounts. Claimants also alleged the following claims: 1) Negligence; 2) Breach of Fiduciary Duty; 3) Negligent Misrepresentation; and

4) Failure to Supervise. Claimants' dispute involved investments in tax-exempt municipal bonds.

Respondents denied Claimants' allegations of wrongdoing and denied any liability to Claimants. Respondents also asserted affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested that the Panel render an award against all of the Respondents, jointly and severally, as follows, according to proof:

1. In excess of \$363,000.00 for loss of principal;
2. In excess of \$83,000.00 in commissions;
3. In excess of \$170,000.00 in lost income;
4. Costs; and
5. Reasonable attorneys' fees.

Respondents requested that the Statement of Claim be denied, and dismissed with prejudice, with the costs associated with the arbitration proceeding assessed against Claimants.

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

Respondents Sheldon D. Freisinger and Joseph E. Clauson did not file with NASD Dispute Resolution ("NASD-DR") properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD-DR Code of Arbitration Procedure ("the Code") and, having answered Claimants' Claim, appeared and testified at the hearing, are bound by the determination of the Panel on all issues submitted.

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. All claims by Claimants are dismissed.
2. Respondents Sheldon D. Freisinger and Joseph E. Clauson's requests that the above-captioned matter be expunged from their records maintained by the NASD Central Registration Depository are denied.

3. Each party shall bear its own costs, including attorneys' fees.
4. All other relief not expressly granted is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD-DR received or will collect the non-refundable filing fees for each claim as follows:

Initial claim filing fee	= \$375.00
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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, Citigroup is a party and the following fees are assessed:

Member Surcharge	= \$2,250.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$4,000.00</u>
Total Member Fees	= \$7,000.00

#### **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) Pre-hearing conference session with the Panel		
@ \$1,200.00/session		= \$1,200.00
Pre-hearing conference:	May 8, 2006	1 session
(5) Hearing sessions @ \$1,200.00/session		= \$6,000.00
Hearing Dates:	November 8, 2006	2 sessions
	November 9, 2006	2 sessions
	November 10, 2006	1 session
<b>Total Forum Fees</b>		<b>= \$7,200.00</b>

The Panel assessed \$3,600.00 of the forum fees jointly and severally to Claimants.

The Panel assessed \$3,600.00 of the forum fees jointly and severally to Respondents.

**Fee Summary**

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

Initial Filing Fee	= \$ 375.00
Forum Fees	= \$ 3,600.00
Total Fees	= \$ 3,975.00
Less Payments	= \$( 1,575.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 2,400.00</b>

2. Respondent Citigroup is charged with the following fees and costs:

Member Fees	= \$ 7,000.00
Less Payments	= \$( 7,000.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 0.00</b>

3. Respondents Citigroup, Sheldon D. Freisinger and Joseph E. Clauson are charged jointly and severally with the following fees and costs:


Forum Fees	= \$ 3,600.00
Less Payments	= \$( 0.00)
<b>Balance Due NASD-DR</b>	<b>= \$ 3,600.00</b>

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

**ARBITRATION PANEL**

Robert M. Lubin, Esq.	-	Public Arbitrator, Presiding Chair
John P. Wilson	-	Public Arbitrator
Gerald Joseph Wilfley	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Robert M. Lubin, Esq.  
Chair, Public Arbitrator

Nov. 22, 2006  
Signature Date

\_\_\_\_\_  
John P. Wilson  
Public Arbitrator

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

\_\_\_\_\_  
Gerald Joseph Wilfley  
Non-Public Arbitrator

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

11/22/06  
Date of Service

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