

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

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In the Matter of the Arbitration Between:

Salvatore Butta and Frances Butta (Claimants) vs. Citigroup Global Markets f/k/a Salomon Smith Barney (Respondent)

Case Number: 06-00843

Hearing Site: New York, New York

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Nature of the Dispute: Customers vs. Member.

**REPRESENTATION OF PARTIES**

Claimants Salvatore Butta ("S. Butta") and Frances Butta ("F. Butta"), hereinafter collectively referred to as "Claimants": Howard Meyers, Esq., New York Law School Legal Services, Inc., New York, NY.

Respondent Citigroup Global Markets f/k/a Salomon Smith Barney ("Citigroup"), hereinafter referred to as "Respondent": Adam M. Kauff, Esq., Citigroup Global Markets, Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 21, 2006.

Opposition to Motion to Dismiss filed on or about: September 19, 2006.

Claimant S. Butta signed the Uniform Submission Agreement: March 20, 2006.

Claimant F. Butta signed the Uniform Submission Agreement: March 20, 2006.

Statement of Answer filed by Respondent on or about: May 25, 2006.

Motion to Dismiss the Statement of Claim based on Statutes of Limitations and the Eligibility Rule filed on or about: May 25, 2006.

Reply to Claimant's Opposition to Respondent's Motion to Dismiss filed on or about: September 27, 2006.

Respondent did not submit a Uniform Submission Agreement.

**CASE SUMMARY**

Claimants asserted the following causes of action: unauthorized trading, unsuitability, churning, misrepresentations and omissions, fraud, breach of contract, breach of fiduciary duty, failure to supervise, securities brokerage malpractice and respondeat superior. The causes of action relate to various securities including the Alger Growth Fund and the Smith Barney Large Cap Growth Fund.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in excess of \$100,000.00, costs including expert witness fees, filing fees and forum fees, reasonable attorneys' fees, punitive damages and any other and further relief that is just, equitable, and proper.

Respondent requested the dismissal of the Statement of Claim in its entirety.

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

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and having answered the claim, and participated at the pre-hearing conferences, is bound by the determination of the Panel on all issues submitted.

A pre-hearing conference was held on January 16, 2007 to hear oral arguments on Respondent's Motion to Dismiss. Arbitrator Stuart Bass could not be reached for the conference call and all parties agreed to proceed with the remaining two arbitrators.

The Panel determined to waive the forum fees that were assessed to Claimants.

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 January 16, 2007 pre-hearing conference, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are dismissed in their entirety.
2. Any and all relief not specifically addressed herein, including punitive damages, is 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

= Waived

### **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 persons at the time of the events giving rise to the dispute. Accordingly, Citigroup Global Markets f/k/a Salomon Smith Barney is a party.

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00

### **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:

Two (2) Pre-hearing sessions with Panel @ \$750.00	= \$1,500.00
Pre-hearing conferences: August 21, 2006 1 session	
January 16, 2007 1 session	
<hr/> Total Forum Fees	<hr/> = \$1,500.00

1. The Panel assessed the \$1,500.00 forum fees jointly and severally to Claimants and has determined to waive Claimants' forum fees in this matter.

### **Fee Summary**

1. Claimants are solely liable for:

Initial Filing Fee	= Waived
Forum Fees	= Waived
Total Fees	= \$ 0.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 0.00

2. Respondent is solely liable for:

Member Fees	= \$1,850.00
Total Fees	= \$1,850.00
Less payments	= \$1,850.00
Balance Due NASD Dispute Resolution	= \$ 0.00

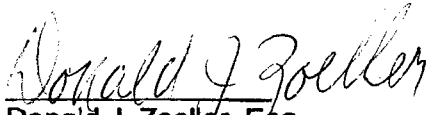
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Donald J. Zoeller, Esq.	-	Public Arbitrator, Presiding Chairperson
John R. Pepe, Sr.	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

**Concurring Arbitrators' Signatures**



Donald J. Zoeller, Esq.  
Public Arbitrator, Presiding Chairperson

1/25/07  
Signature Date

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John R. Pepe, Sr.  
Non-Public Arbitrator

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

January 30, 2007  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

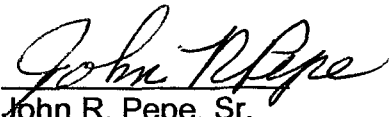
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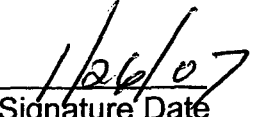
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Donald J. Zoeller, Esq.  
Public Arbitrator, Presiding Chairperson

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Signature Date

  
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John R. Pepe, Sr.  
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