

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

Names of Claimants

Judith F. Grogan  
Richard D. Funderburke

Case No. 99-00915

Names of Respondents

Salomon Smith Barney, Inc.  
Edward R. Doughty

Name of Third Party Respondent

John P. Funderburke

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**REPRESENTATION OF PARTIES**

For Judith F. Grogan ("Grogan") and Richard D. Funderburke ("R. Funderburke"), hereinafter collectively referred to as "Claimants": F. Douglas Banks, Esq. of Poyner & Spruill, LLP, Charlotte, North Carolina.

For Salomon Smith Barney, Inc. ("Salomon") and Edward R. Doughty ("Doughty"): John P. Bevilacqua, Senior Vice President and Associate General Counsel, Respondent Salomon, New York, New York.

For John P. Funderburke ("J. Funderburke"): M. James Grode, Esq. of Moore & Van Allen, PLLC, Charlotte, North Carolina.

**CASE INFORMATION**

Statement of Claim filed on or about: March 2, 1999.

Claimant Grogan signed the Uniform Submission Agreement on: February 19, 1999.

Claimant R. Funderburke signed the Uniform Submission Agreement on: February 20, 1999.

Statement of Answer and Third Party Claim filed by Respondents Salomon and Doughty on or about: June 4, 1999.

Respondent Salomon signed the Uniform Submission Agreement on: June 1, 1999.

Respondent Doughty signed the Uniform Submission Agreement on: April 27, 1999.

Statement of Answer filed by Third Party Respondent J. Funderburke on: May 30, 2000.

Third Party Respondent J. Funderburke signed the Uniform Submission Agreement on: June 26, 2000.

### **CASE SUMMARY**

Claimants asserted a cause of action for negligence. The cause of action relates to the purchase of an annuity by Julian Funderburke, the father of Claimants and Third Party Respondent J. Funderburke, and Respondents Salomon's and Doughty's failure to name Claimants and Third Party Respondent J. Funderburke as equal beneficiaries to the proceeds of the annuity. Claimants further alleged that Third Party Respondent J. Funderburke wrongfully received and retained the proceeds of the annuity upon the demise of Julian Funderburke.

Unless specifically admitted in their Answer, Respondents Salomon and Doughty denied the allegations made in the Statement of Claim and asserted the following defenses: 1) Respondents Salomon and Doughty did not violate any rules, regulations or applicable laws; 2) Claimants failed to state a claim upon which relief may be granted; 3) Claimants failed to mitigate their damages; 4) Claimants are barred from recovery by the doctrines of ratification, waiver, estoppel, and laches; and 5) Claimants' losses, if any, were caused by their acts or omissions.

Respondents Salomon and Doughty asserted a third party claim for indemnification against Third Party Respondent J. Funderburke.

Unless specifically admitted in his Answer, Third Party Respondent J. Funderburke denied the allegations made in the third party claim and asserted the following defenses: 1) Respondents Salomon and Doughty are not entitled to damages because Third Party Respondent J. Funderburke is an innocent party; and 2) Third Party Respondent J. Funderburke is entitled to a set-off for taxes paid on the proceeds of the annuity.

### **RELIEF REQUESTED**

Claimant Grogan requested: 1) compensatory damages in the amount of \$89,342.33; 2) interest; and 3) attorneys' fees.

Claimant R. Funderburke requested: 1) compensatory damages in the amount of \$89,342.33; 2) interest; and 3) attorneys' fees.

Respondents Salomon and Doughty requested: 1) indemnification for damages awarded against Respondents Salomon and Doughty; and 2) dismissal of the Statement of Claim.

Third Party Respondent J. Funderburke requested dismissal of the third party claim.

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

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 undersigned arbitrators (the "Panel") has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Salomon and Doughty are liable, jointly and severally, and shall pay to Claimant Grogan compensatory damages in the amount of \$85,500.11 plus interest which shall begin to accrue as of July 23, 1998, at the rate of eight (8.00%) percent per annum, and shall continue to accrue until the Award is paid in full.
2. Respondents Salomon and Doughty are liable, jointly and severally, and shall pay to Claimant R. Funderburke compensatory damages in the amount of \$85,500.11 plus interest which shall begin to accrue as of July 23, 1998, at the rate of eight (8.00%) percent per annum, and shall continue to accrue until the Award is paid in full.
3. Third Party Respondent J. Funderburke is liable and shall pay jointly to Respondents Salomon and Doughty compensatory damages in the amount of \$171,000.22 plus interest which shall begin to accrue as of July 23, 1998, at the rate of eight (8.00%) percent per annum, and shall continue to accrue until the Award is paid in full.
4. Each party shall bear their respective costs, including attorneys' fees.
5. All other requests for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$200.00
Third Party claim filing fee	= \$500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. In this matter, the member firm a party.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

There were no adjournments requested during these proceedings.

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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:

One (1) Pre-hearing session with a single arbitrator x \$300.00 = \$ 300.00  
Pre-hearing conference: September 7, 2000 1 session

Two (2) Pre-hearing sessions with Panel x \$750.00 = \$1,500.00  
Pre-hearing conferences: December 20, 1999 1 session  
June 21, 2000 1 session

Two (2) Hearing sessions x \$750.00 = \$1,500.00  
Hearing Dates: October 12, 2000 2 sessions

Total Forum Fees = \$3,300.00

The Panel has assessed the total forum fees of \$3,300.00 to Respondent Salomon.

### **Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services including, but not limited to, additional copies of arbitrator awards beyond those provided without charge, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during these proceedings.

### **Fee Summary**

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$200.00	
Total Fees	= \$200.00	
<u>Less payments</u>	<u>= \$200.00</u>	
Balance Due NASD Dispute Resolution, Inc.		= \$0.00

Respondent Salomon be and hereby is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$3,300.00
Total Fees	= \$7,900.00
<u>Less payments</u>	<u>= \$4,100.00</u>

Balance Due NASD Dispute Resolution, Inc. = \$3,800.00

Respondents Salomon and Doughty be and hereby are jointly and severally liable for:

Third Party Claim Filing Fee = \$500.00

Total Fees = \$500.00

Less payments = \$500.00

Balance Due NASD Dispute Resolution, Inc. = \$0.00

All balances are due and payable to NASD Dispute Resolution, Inc.

**Concurring Arbitrators' Signatures**

/s/  
Clarence C. Guy  
Public Arbitrator, Presiding Chair

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

/s/  
Duran G. McDonald  
Industry Arbitrator

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

/s/  
Robert N. Hunter, Jr., Esq.  
Public Arbitrator

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

November 9, 2000  
Date of Service (For NASD-DR office use only)

Balance Due NASD Dispute Resolution, Inc.

= \$3,800.00

Respondents Salomon and Doughty be and hereby are jointly and severally liable for:

Third Party Claim Filing Fee

= \$500.00

Total Fees

= \$500.00

Less payments

= \$500.00

Balance Due NASD Dispute Resolution, Inc.

= \$0.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

Clarence C. Guy

Clarence C. Guy

Public Arbitrator, Presiding Chair

10-26-00

Signature Date

Duran G. McDonald

Industry Arbitrator

Signature Date

Robert N. Hunter, Jr., Esq.

Public Arbitrator

Signature Date

Date of Service (For NASD-DR office use only)

2000

Balance Due NASD Dispute Resolution, Inc. = \$3,800.00

Respondents Salomon and Doughty be and hereby are jointly and severally liable for:

Third Party Claim Filing Fee = \$500.00

Total Fees = \$500.00

Less payments = \$500.00

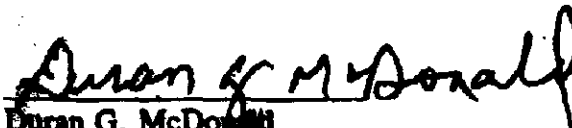
Balance Due NASD Dispute Resolution, Inc. = \$0.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

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Clarence C. Guy  
Public Arbitrator, Presiding Chair

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Signature Date

  
\_\_\_\_\_  
Duran G. McDonald  
Industry Arbitrator

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

\_\_\_\_\_  
Robert N. Hunter, Jr., Esq.  
Public Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD-DR office use only)

Balance Due NASD Dispute Resolution, Inc.

= \$3,800.00

Respondents Salomon and Dougherty be and hereby are jointly and severally liable for:

Third Party Claim Filing Fee

= \$500.00

Total Fees

= \$500.00

Less payments

= \$500.00

Balance Due NASD Dispute Resolution, Inc.

= \$0.00

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

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Clarence C. Guy

Public Arbitrator, Presiding Chair

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Signature Date

\_\_\_\_\_  
Duran G. McDonald

Industry Arbitrator

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

  
\_\_\_\_\_  
Robert N. Hunter, Jr., Esq.

Public Arbitrator

10/25/00  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD-DR office use only)