

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

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In the Matter of the Arbitration Between

Names of Claimants

James Thomas, Jr.  
Frankie J. Thomas

Case No. 99-02821

Name of Respondent

Citicorp Investment Services

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**REPRESENTATION OF PARTIES**

For James Thomas, Jr. and Frankie J. Thomas, hereinafter collectively referred to as "Claimants": Robert Wayne Pearce, P.A., Boca Raton, Florida.

For Citicorp Investment Services ("Citicorp"), hereinafter referred to as "Respondent": Alejandro Schwed, of Counsel, Citicorp, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: June 18, 1999.

Claimants signed the Uniform Submission Agreements: June 9, 2000.

Statement of Answer filed by Respondent on or about: September 2, 1999.

Respondent signed the Uniform Submission Agreement: September 2, 1999.

**CASE SUMMARY**

Claimants asserted the following: Claimants filed claims against Respondent Citicorp for breach of fiduciary duty, violation of Chapter 517.301, Florida Statutes, negligent supervision and breach of contract in connection with the opening of their Citicorp account, transfer of securities to Citicorp and failure to execute an order to sell all of their 3COM securities in their Citicorp account. Claimants alleged that Citicorp misplaced over 10,000 shares of 3COM common stock in the transfer of their account from Morgan Stanley Dean Witter to Citicorp. Claimants claimed that Citicorp failed to accurately report the status of the transfer and its inability to sell the securities that were transferred to that brokerage firm. Approximately two (2) months elapsed between the time the transfer process was initiated and when the securities were located and liquidated. In that time period, the value of the 3COM securities in Claimants' account had declined over \$230,000.00.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: The securities were sold at Citicorp pursuant to Claimants' instructions. The fact that there had been a fluctuation in the price of the securities during the time it took to accomplish the transfer is not the fault of Respondent. The Claimant and Morgan Stanley Dean Witter bear some responsibility for the delay as a result of the defective instructions and information provided to Respondent. Further, Claimant did not provide clear instructions to sell the securities until after the price decline that took place in early February, 1999. Respondent is not liable for the decline in price that took place until securities could be transferred to the correct account, and Claimants provided clear instructions as to what they wanted to do with them.

### **RELIEF REQUESTED**

Claimants requested their actual damages with interest in the amount of \$267,285.00 and reserved the issue of attorneys' fees for a court of competent jurisdiction in accordance with Florida law.

Respondent requested that the Statement of Claim be dismissed, and that the costs be assessed to Claimant.

### **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 Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable and shall pay to Claimants the sum of \$35,000.00, pre-judgment interest specifically excluded.

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	= \$300.00
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### **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 is 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 Pre-hearing session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: January 25, 2000	1 session
Eight Hearing sessions x \$1,125.00	= \$9,000.00
Hearing Dates:	
September 5, 2000	2 sessions
September 6, 2000	2 sessions
September 7, 2000	2 sessions
<u>September 8, 2000</u>	<u>2 sessions</u>
Total Forum Fees	= \$10,125.00

The Panel has assessed \$5,062.50 of the forum fees to Claimants, jointly and severally.  
The Panel has assessed \$5,062.50 of the forum fees to Respondent.

### **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.

There were no administrative costs incurred during these proceedings.

### **Fee Summary**

Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee	= \$300.00
Forum Fees	= \$5,062.50
Total Fees	= \$5,362.50

<u>Less payments</u>	= \$1,425.00
Balance Due NASD Dispute Resolution, Inc.	= \$3,937.50

Respondent be and hereby is solely liable for:

Member Fees	= \$4,600.00
Forum Fees	= \$5,062.50
Total Fees	= \$9,662.50
<u>Less payments</u>	= \$4,600.00
Balance Due NASD Dispute Resolution, Inc.	= \$5,062.50

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

Concurring Arbitrators' Signatures

\_\_\_\_\_/s/\_\_\_\_\_  
Robert L. Banford  
Public Arbitrator

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

\_\_\_\_\_/s/\_\_\_\_\_  
Thomas C. Krumenacker  
Industry Arbitrator

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

Dissenting Arbitrator's Signature

\_\_\_\_\_/s/\_\_\_\_\_  
Nora A. Femenia  
Public Arbitrator, Presiding Chair

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

Arbitrator, Nora A. Femenia, respectfully dissents with respect to this decision.

October 20, 2000  
Date of Service (For NASD-DR office use only)

Less payments= \$1,425.00

Balance Due NASD Dispute Resolution, Inc.

= \$3,937.50

Respondent be and hereby is solely liable for:

Member Fees

= \$4,600.00

Forum Fees

= \$5,062.50

Total Fees

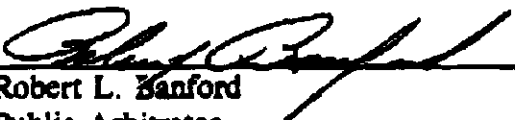
= \$9,662.50

Less payments= \$4,600.00

Balance Due NASD Dispute Resolution, Inc.

= \$5,062.50

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

Concurring Arbitrators' Signatures  
\_\_\_\_\_  
Robert L. Sanford  
Public Arbitrator\_\_\_\_\_  
Signature Date\_\_\_\_\_  
Thomas C. Krumenacker  
Industry Arbitrator\_\_\_\_\_  
Signature DateDissenting Arbitrator's Signature\_\_\_\_\_  
Nora A. Femenia  
Public Arbitrator, Presiding Chair\_\_\_\_\_  
Signature Date

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

Less payments

Balance Due NASD Dispute Resolution, Inc.

= \$1,425.00

= \$3,937.50

Respondent be and hereby is solely liable for:

Member Fees

= \$4,600.00

Forum Fees

= \$5,062.50

Total Fees

= \$9,662.50

Less payments

Balance Due NASD Dispute Resolution, Inc.

= \$4,600.00

= \$5,062.50

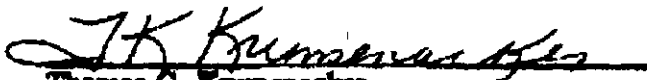
All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures

Robert L. Benford

Public Arbitrator

Signature Date



Thomas C. Krumenacker

Industry Arbitrator

10-19-00  
Signature Date

Dissenting Arbitrator's Signature

Nora A. Femenia

Public Arbitrator, Presiding Chair

Signature Date

Arbitrator, Nora A. Femenia, respectfully dissents with respect to this decision.

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

Less payments = \$1,425.00  
Balance Due NASD Dispute Resolution, Inc. = \$3,937.50

Respondent be and hereby is solely liable for:

Member Fees = \$4,600.00  
Forum Fees = \$5,062.50  
Total Fees = \$9,662.50  
Less payments = \$4,600.00  
Balance Due NASD Dispute Resolution, Inc. = \$5,062.50

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

Concurring Arbitrators' Signatures


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Robert L. Banford  
Public Arbitrator

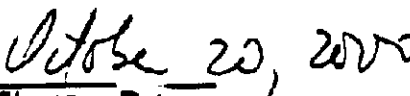
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Signature Date

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Thomas C. Krumenacker  
Industry Arbitrator

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

Dissenting Arbitrator's Signature

  
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Nora A. Femenia  
Public Arbitrator, Presiding Chair

  
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Signature Date

Arbitrator, Nora A. Femenia, respectfully dissents with respect to this decision.

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