

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

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**In the Matter of the Arbitration Between:**

**Janet Basil, (Claimant) vs. Salomon Smith Barney and Matthew Zimmerman, (Respondents)**

**Case Number: 99-02829**

**Hearing Site: New York, New York**

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**REPRESENTATION OF PARTIES**

**Claimant, Janet Basil, hereinafter referred to as "Claimant": Mary Ann Stokes, Esq., Cohn Lifland Pearlman Herrmann & Knopf LLP, Saddle Brook, NJ.**

**Respondent, Salomon Smith Barney ("Salomon"): Etta M. Gumbs, Esq., First Vice President, Salomon Smith Barney, New York, NY.**

**Respondent, Matthew Zimmerman ("Zimmerman"), did not appear at the hearings in this matter. Previously represented by: Joseph E. Gasperetti, Esq., Law Offices of Joseph E. Gasperetti, P.C., New York, NY.**

**CASE INFORMATION**

**Statement of Claim filed on or about: June 16, 1999.**

**Amended Statement of Claim filed on or about: October 9, 2000.**

**Claimant signed the Uniform Submission Agreement: June 2, 1999.**

**Claimant signed the Amended Uniform Submission Agreement: October 2, 2000.**

**Statement of Answer filed by Salomon on or about: September 7, 1999.**

**Amended Statement of Answer filed by Salomon on or about: November 8, 2000.**

**Salomon did not sign a Uniform Submission Agreement.**

**Statement of Answer filed by Zimmerman on or about: September 7, 1999.**

**Zimmerman did not sign a Uniform Submission Agreement.**

**CASE SUMMARY**

**Claimant asserted the following causes of action: misrepresentations; failure to supervise; respondeat superior; and failure to inform Claimant that she was withdrawing from her principal. Claimant's claim involved unspecified bonds and other securities.**

Unless specifically admitted in its Answer or Amended Answer, Salomon denied the allegations made in the Statement of Claim and Amended Statement of Claim, and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; any losses allegedly sustained by Claimant were due to her own decision to buy, hold, or sell the securities at issue; any losses allegedly incurred by Claimant were the result of Claimant's investment objectives and decisions; Claimant is barred from recovery because she failed to complain in a timely manner; Claimant is barred from recovery by the doctrines of laches, waiver, and estoppel; Claimant assumed the risks of investing in the securities complained of; Claimant is barred from recovery because she authorized, approved of, and/or ratified all transactions at issue; Respondents acted in good faith in reliance upon Claimant's representations of financial status, as well as her knowledge and understanding of the trading at issue; at all times mentioned in the Statement of Claim, Salomon maintained an adequate and reasonable system of supervision over brokers in its employ; and Claimant's loss/damage calculation is inaccurate and is not grounded in law or fact.

Unless specifically admitted in his Answer, Zimmerman denied the allegations made in the Statement of Claim and Amended Statement of Claim, and asserted the following defenses: the Statement of Claim fails to state a claim upon which relief can be granted; Claimant ordered, approved, participated in, and ratified the acts and transactions complained of in the Statement of Claim; and Claimant is barred from recovery by the doctrines of ratification, waiver, and estoppel.

#### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$89,879.00, plus interest, reasonable attorneys' fees, and costs of arbitration.

Salomon requested that the Panel dismiss this claim in its entirety.

Zimmerman requested an Award in his favor dismissing the Statement of Claim in its entirety; awarding him his costs, filing fee, and hearing fees; and for such other and further relief as to the Panel may seem just and proper.

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

This arbitration was originally filed as Janet Basil and Rita Geigerich vs. Salomon Smith Barney and Matthew Zimmerman. In the original Statement of Claim, the compensatory damages for both Claimants totaled \$103,271.00. On September 7, 1999, Salomon filed a Motion for Severance of the Claimants' claims. On October 4, 1999, Claimants filed a Response to the Motion for Severance. Although the Motion was initially denied by the Director of Arbitration, Salomon reasserted the Motion with the Panel. After due consideration, the Panel granted Salomon's Motion to Sever. Accordingly, an Amended Statement of Claim was filed on behalf of Claimant Janet Basil, only, requesting compensatory damages in the amount of \$89,879.00.

Upon review of the file and the representations made on behalf of the Claimant, the undersigned arbitrators (the "Panel") determined that Zimmerman has been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without Zimmerman present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Salomon and Zimmerman did not file with NASD Dispute Resolution, Inc. properly executed submissions to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted.

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

1. Zimmerman be and hereby is solely liable for and shall pay to Claimant the sum of \$70,000.00 as compensatory damages, plus interest at the rate of 9% per annum accruing from June 6, 2001 until payment.
2. Salomon be and hereby is solely liable for and shall pay to Claimant the sum of \$300.00, to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution, Inc.
3. All other requests for relief are hereby 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

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm that employed the associated person at the time of the events giving rise to the dispute. In this matter, Salomon Smith Barney is a party.

Member surcharge = \$1,500.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$1,500.00

#### **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 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 x \$750.00 = \$1,500.00

Pre-hearing conferences:	May 16, 2000	1 session
	May 18, 2000	1 session

Three (3) Hearing sessions x \$750.00 = \$2,250.00

Hearing Dates:	June 5, 2001	1 session
	June 6, 2001	2 sessions

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Total Forum Fees — = \$3,750.00

The Panel has assessed all of the forum fees against Salomon.

### **Fee Summary**

1. Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 300.00
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Total Fees	= \$ 300.00
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Less payments	= \$1,425.00
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Refund Due Claimant	= \$1,125.00
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*As stated in the "Award" section above, Salomon is liable and shall reimburse Claimant for the \$300.00 filing fee.*

2. Salomon be and hereby is solely liable for:

Member Fees	= \$3,600.00
<u>Forum Fees</u>	<u>= \$3,750.00</u>
Total Fees	= \$7,350.00
<u>Less payments</u>	<u>= \$2,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$5,250.00

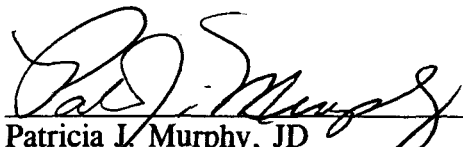
All balances are due and payable to NASD Dispute Resolution, Inc.

**ARBITRATION PANEL**

Patricia J. Murphy, JD	-	Public Arbitrator, Presiding Chair
Milton Elis	-	Public Arbitrator
John A. Borgese, Esq.	-	Industry Arbitrator

**Concurring Arbitrators' Signatures**

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.

  
Patricia J. Murphy, JD  
Public Arbitrator, Presiding Chair

7/10/01  
Signature Date

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Milton Elis  
Public Arbitrator

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

\_\_\_\_\_  
John A. Borgese, Esq.  
Industry Arbitrator

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

July 18, 2001  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

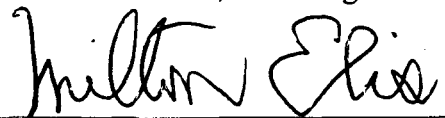
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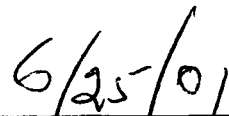
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Public Arbitrator, Presiding Chair



Milton Elis  
Public Arbitrator

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Signature Date



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Signature Date

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John A. Borgese, Esq.  
Industry Arbitrator

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Signature Date

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Public Arbitrator, Presiding Chair

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Signature Date

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Milton Elis  
Public Arbitrator

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Signature Date



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John A. Borgese, Esq.  
Industry Arbitrator

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6/25/01  
Signature Date

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July 18, 2001  
Date of Service (For NASD office use only)