

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

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In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 04-02478

Patricia R. Yellen, for the benefit of her IRA  
Barry B. Yellen, for the benefit of his IRA  
Cinetel Corporation, Barry B. Yellen as President  
Cinetel Corporation Defined Benefit Pension Plan,  
Barry B. Yellen, Trustee  
Arnold T. Schwab Charitable Remainder Unitrust UAD 7/15/96,  
Barry B. Yellen, Trustee  
Arnold T. Schwab Living Trust UAD 3/31/82,  
Arnold T. Schwab, Trustee  
Lan O'Kun Ink, Inc. 401(K), Lan O'Kun, Trustee  
Lan & Barbara O'Kun Family Trust UAD 7/3/80,  
Lan O'Kun, Trustee  
Elliot F. Kulick, for the benefit of his IRA  
Ruth and Derek Tilsley Living Trust UAD 5/9/95,  
Derek Tilsley, Trustee  
Castle Hill Productions, Inc. Pension Plan 2 UAD 11/1/81,  
Julian Schlossberg, Trustee  
Arthur & Gwen Hiller Family Trust, Arthur Hiller, Trustee  
Toby Goldfarb, for the benefit of his IRA  
Joanne Goldfarb, for the benefit of her IRA  
Peggy Carlin, for the benefit of her IRA  
Robert Praskin, for the benefit of his IRA  
Ralph & Gloria Donnelly Trust UAD 11/15/01,  
Ralph Donnelly, Trustee  
Joy Merns

Name of the Respondent

Hearing Site: Tampa, Florida

Citigroup Global Markets, Inc.  
f/k/a Salomon Smith Barney Inc.

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Patricia R. Yellen, for the benefit of her IRA, Barry B. Yellen, for the benefit of his IRA, Cinetel Corporation, Barry B. Yellen as President, Cinetel Corporation Defined Benefit Pension Plan, Barry B. Yellen, Trustee, Arnold T. Schwab Charitable Remainder Unitrust UAD 7/15/96, Barry B. Yellen, Trustee, Arnold T. Schwab Living Trust UAD 3/31/82, Arnold T. Schwab, Trustee, Lan O'Kun Ink, Inc. 401(K), Lan O'Kun, Trustee, Lan & Barbara O'Kun Family Trust UAD 7/3/80, Lan O'Kun, Trustee, Elliot F. Kulick, for the benefit of his IRA, Ruth and Derek Tilsley Living Trust UAD 5/9/95, Derek Tilsley, Trustee, Castle Hill Productions, Inc. Pension Plan 2 UAD 11/1/81, Julian Schlossberg, Trustee, Arthur & Gwen Hiller Family Trust, Arthur Hiller, Trustee, Toby Goldfarb, for the benefit of his IRA, Joanne Goldfarb, for the benefit of her

IRA, Robert Praskin IRA, Ralph & Gloria Donnelly Trust UAD 11/15/01, Ralph Donnelly, Trustee, and Joy Merns, hereinafter collectively referred to as "Claimants": Thomas A. Hargett, Esq. Maddox, Hargett & Caruso, P.C. Fishers, Indiana and Jeffrey Pombert, Esq., Page Perry, L.L.C., Atlanta, Georgia.

For Citigroup Global Markets, Inc., f/k/a Salomon Smith Barney Inc. ("Citigroup"), hereinafter referred to as "Respondent": Tucker H. Byrd, Esq. and Jacqueline Becerra, Esq., Greenberg Traurig, P.A., Miami, Florida.

### CASE INFORMATION

Statement of Claim filed on or about: April 7, 2004.

Claimants Patricia R. Yellen, for the benefit of her IRA, Barry B. Yellen, for the benefit of his IRA, Cinetel Corporation, Barry B. Yellen as President, Cinetel Corporation Defined Benefit Pension Plan, Barry B. Yellen, Trustee, and Arnold T. Schwab Charitable Remainder Unitrust UAD 7/15/96, Barry B. Yellen, Trustee, signed the Uniform Submission Agreement: March 31, 2004.

Claimants Lan O'Kun Ink, Inc., Lan O'Kun, Trustee, Lan & Barbara O'Kun Family Trust UAD 7/3/80, Lan O'Kun, Trustee, Castle Hill Productions, Inc. Pension Plan 2 UAD 11/1/81, Julian Schlossberg, Trustee, and Arthur & Gwen Hiller Family Trust, Arthur Hiller, Trustee signed the Uniform Submission Agreement: March 26, 2004.

Claimants Ruth and Derek Tilsley Living Trust UAD 5/9/95, Derek Tilsley, Trustee, Toby Goldfarb, for the benefit of his IRA, Joanne Goldfarb, for the benefit of her IRA, Robert Praskin, for the benefit of his IRA, and Joy Merns signed the Uniform Submission Agreement: March 24, 2004.

Claimants Arnold T. Schwab Living Trust UAD 3/31/82, Arnold T. Schwab, Trustee, Peggy Carlin, for the benefit of her IRA, and Ralph & Gloria Donnelly Trust UAD 11/15/01, Ralph Donnelly, Trustee signed the Uniform Submission Agreement: March 23, 2004.

Richard J. Medalie, POA for Claimant Elliot F. Kulick, for the benefit of his IRA, signed but did not date the Uniform Submission Agreement.

Respondent Citigroup signed the Uniform Submission Agreement: May 20, 2004.

Motion to Dismiss Claims Brought by The Schwab Charitable Trust filed by Respondent Citigroup on or about: May 2, 2005.

Response in Opposition to Respondent Citigroup's Motion to Dismiss Claims Brought by The Schwab Charitable Trust, with incorporated request for monetary sanction, filed by Claimants on or about: May 10, 2005.

### CASE SUMMARY

Claimants alleged the following causes of action in the Statement of Claim: 1) misrepresentation of material facts; 2) omission of material facts; 3) improper research recommendations; 4) failure

to supervise; 5) violations of New Hampshire common law: a) fraud; b) negligence; c) breach of contract; d) breach of fiduciary duty; and e) respondeat superior; 6) violations of the New Hampshire Securities Act, Sections 421-B:3 (I), 421-B:3 (III), and 421-B:25 (III); 7) violations of New York Stock Exchange Rules 401, 405, and 342; 8) violations of American Stock Exchange Rules 16, 411, and 320; and 9) violations of NASD Conduct Rules 2110, 2120, 2210, and 3010. The causes of action relate to Claimants' common stock and option investments in WorldCom, Inc.

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

### **RELIEF REQUESTED**

Claimants requested: 1) compensatory damages in the amount of \$1,742,187.00; 2) pre-judgment interest; 3) post-judgment interest; 4) attorney's fees; 5) costs; 6) punitive damages; 7) forum fees; and, 8) such other and further relief as the undersigned arbitrators (the "Panel") deemed just and proper.

Respondent Citigroup requested: 1) dismissal of the Statement of Claim, with prejudice; 2) attorneys' fees; and, 3) costs.

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

On or about May 20, 2005, the Panel issued an Order that denied Respondent Citigroup's Motion to Dismiss Claims Brought by The Schwab Charitable Trust, without prejudice, and denied Claimants' Request for Monetary Sanction, without prejudice.

At the conclusion of the first set of evidentiary hearings, the parties stipulated and the Panel agreed to view video depositions to be included as part of the record in this matter. The parties further stipulated to compensate the Panel for three additional hearing sessions in connection herewith.

During the evidentiary hearing and at the close of the Claimants' case, Respondent made an ore tenus Motion to Dismiss. The Panel denied Respondent's motion, without prejudice.

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, 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 on the claim of violations of the New Hampshire Securities Act. Respondent shall pay to Claimants, as a group, compensatory damages in the amount of \$462,500.00, plus un-compounded interest at a rate of 4% per annum accruing from May 1, 2002, until the date of payment of the Award.

The parties' requests for attorneys' fees are denied and each party shall pay its own attorneys' fees.

Any and all claims for relief not specifically addressed herein, including the Claimants' request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 500.00
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Respondent Citigroup is a member firm and a party.

Member surcharge	= \$2,800.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$5,000.00</u>
Total Member Fees	= \$8,550.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

June 13-17, 2005, June 27-July 1, 2005, joint request for adjournment to mediate outside NASD.

The Panel has assessed the adjournment fee in the amount of \$1,200.00 as follows:

\$600.00 to Claimants, jointly and severally

\$600.00 to Respondent Citigroup

#### **Three-Day Cancellation Fees**

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

No three-day cancellation fees were incurred in this matter.

#### **Injunctive Relief Fees**

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

No injunctive relief fees were incurred in this matter.

**Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. 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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00/session = \$ 450.00  
Pre-hearing conference: May 12, 2005 1 session

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 2,400.00  
Pre-hearing conferences: July 26, 2004 1 session  
June 17, 2005

Twenty (20) Hearing sessions @ \$1,200.00/session = \$24,000.00  
Hearing Dates: March 13, 2006 2 sessions  
March 14, 2006 2 sessions  
March 15, 2006 3 sessions  
March 16, 2006 3 sessions  
March 17, 2006 2 sessions  
April 28, 2006 3 sessions  
May 1, 2006 3 sessions  
May 2, 2006 2 sessions

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Total Forum Fees = \$26,850.00

The Panel assessed the total forum fees in the amount of \$26,850.00 to Respondent.

**Administrative Costs**

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred in this matter.

**Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
<u>Adjournment Fee</u>	= \$ 600.00
Total Fees	= \$ 1,100.00
<u>Less payments</u>	= \$ 1,100.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent Citigroup is solely liable for:

Member Fees	= \$ 8,550.00
Adjournment Fee	= \$ 600.00
<u>Forum Fees</u>	= \$26,850.00
Total Fees	= \$36,000.00

<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$27,450.00

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

**ARBITRATION PANEL**

Gayle B. Carlson, Esq.	-	Public Arbitrator, Presiding Chairperson
Richard Lee Klein	-	Public Arbitrator
Patrick D. King	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

/s/  
Gayle B. Carlson, Esq.  
Public Arbitrator, Presiding Chairperson

May 8, 2006  
Signature Date

/s/  
Richard Lee Klein  
Public Arbitrator

May 10, 2006  
Signature Date

/s/  
Patrick D. King  
Non-Public Arbitrator

May 8, 2006  
Signature Date

May 9, 2006  
Date of Service (For NASD Dispute Resolution office use only)

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<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$27,450.00

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Richard Lee Klein	-	Public Arbitrator
Patrick D. King	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Gayle B. Carlson  
 Gayle B. Carlson, Esq.  
 Public Arbitrator, Presiding Chairperson

5/8/06  
 Signature Date

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 Richard Lee Klein  
 Public Arbitrator

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

\_\_\_\_\_  
 Patrick D. King  
 Non-Public Arbitrator

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Public Arbitrator, Presiding Chairperson

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