

**Amended Award  
FINRA Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of Claimants

Case Number: 09-03297

Gerald D. Hosier, individually and as trustee  
of the Gerald D. Hosier U/A/D 10/04/99  
Brush Creek Capital LLC  
Jerry Murdock, Jr.

Name of Respondent

Hearing Site: Denver, Colorado

Citigroup Global Markets Inc.

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Nature of Dispute: Customers vs. Member

**REPRESENTATION OF PARTIES**

Claimants, Gerald D. Hosier, individually and as trustee of the Gerald D. Hosier U/A/D 10/04/99 ("Hosier"), Brush Creek Capital LLC ("Brush Creek"), and Jerry Murdock, Jr. ("Murdock"), hereinafter collectively referred to as "Claimants": Philip M. Aidikoff, Esq., Robert A. Uhl, Esq., and Ryan K. Bakhtiari, Esq., Aidikoff, Uhl & Bakhtiari, Beverly Hills, California; and Steven B. Caruso, Esq., Maddox Hargett & Caruso, P.C., New York, New York.

Respondent, Citigroup Global Markets Inc. hereinafter referred to as "Respondent": H. Nicholas Berberian, Esq., Patrick G. King, Esq., and Tina L. Winer, Esq., Neal, Gerber & Eisenberg LLP, Chicago, Illinois.

**CASE INFORMATION**

Statement of Claim filed on or about: June 2, 2009

Claimant Hosier signed the Submission Agreement: June 10, 2009

Claimant Brush Creek signed the Submission Agreement: June 10, 2009

Claimant Murdock signed the Submission Agreement: May 28, 2009

Statement of Answer filed by Respondent on or about: September 2, 2009

Respondent signed the Submission Agreement: November 24, 2009

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### **CASE SUMMARY**

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) breach of written contract; 3) constructive fraud; 4) violation of FINRA rules; 5) unsuitability; 6) failure to supervise; and 7) respondeat superior. The causes of action relate to multiple investments in various municipal bond hedge funds, including, but not limited to, MAT Finance, MAT Two, MAT Three, MAT Five, ASTA Finance, ASTA Three, and ASTA Five.

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

### **RELIEF REQUESTED**

In the Statement of Claim, Claimants requested:

1. General and compensatory damages in an amount according to proof but not less than \$48,190,417.00 minus residual value and/or amounts withdrawn;
2. Lost opportunity costs in an amount according to proof;
3. Fees, commissions, or other remuneration paid to Respondent by Claimants;
4. Cost of proceedings;
5. Punitive damages in an amount according to proof;
6. Interest at the legal rate on all sums recovered;
7. Attorneys' fees and costs;
8. Rescission; and
9. Such other and further relief as this Panel deems just and appropriate.

In the Statement of Answer, Respondent requested that the Statement of Claim be dismissed with prejudice and that the costs associated with the arbitration be assessed against Claimants.

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

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

During the evidentiary hearing, the parties stipulated that the court reporter transcript would be the official record of the proceeding, and that parties would split all court reporter costs.

On April 12, 2011, the parties agreed that the Representation of Parties section of the award could be amended to include Philip M. Aidikoff as counsel for 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.

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### **AWARD**

After considering the pleadings, the testimony, evidence presented at the hearing, and post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is liable for and shall pay to Claimants, Gerald D. Hosier, individually and as trustee of the Gerald D. Hosier U/A/D 10/04/99, compensatory damages in the amount of \$21,683,679.00.
2. Respondent is liable for and shall pay to Claimants, Gerald D. Hosier, individually and as trustee of the Gerald D. Hosier U/A/D 10/04/99, interest on the aforementioned award of \$21,683,679.00, at the Colorado statutory rate of 8% per annum, accruing from the 31<sup>st</sup> day after service of this award if it remains unpaid, until final payment of the award.
3. Respondent is liable for and shall pay to Claimant Brush Creek Capital LLC compensatory damages in the amount of \$8,472,212.00.
4. Respondent is liable for and shall pay to Claimant Brush Creek Capital LLC interest on the aforementioned award of \$8,472,212.00, at the Colorado statutory rate of 8% per annum, accruing from the 31<sup>st</sup> day after service of this award if it remains unpaid, until final payment of the award.
5. Respondent is liable for and shall pay to Claimant Jerry Murdock, Jr. compensatory damages in the amount of \$3,903,057.00.
6. Respondent is liable for and shall pay to Claimant Jerry Murdock, Jr. interest on the aforementioned award of \$3,903,057.00, at the Colorado statutory rate of 8% per annum, accruing from the 31<sup>st</sup> day after service of this award if it remains unpaid, until final payment of the award.
7. Respondent is liable for and shall to pay Claimants punitive damages in the amount of \$17,000,000.00 pursuant to Pyle v. Securities, U.S.A., Inc., 758 F.Supp 639 (D.Colo. 1991).
8. Respondent is liable for and shall pay to Claimants attorneys' fees in the amount of \$3,000,000.00 pursuant to Colorado Revised Statutes Sec. 11-51-604, see also Barrett v. Investment Management Consultants, Ltd. 190 P.3d 800 (Colo. App. 2008).
9. Respondent is liable for and shall pay to Claimants \$33,500.00 in expert witness fees.
10. Respondent is liable for and shall pay to Claimants \$13,168.29 in court reporter costs.

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11. Respondent is liable for and shall pay to Claimants the sum of \$600.00 as reimbursement for the non-refundable portion of the initial claim filing fee previously paid by Claimants to FINRA Dispute Resolution.
12. Any and all relief not specifically addressed herein is denied.

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### FEES

Pursuant to the Code, the following fees are assessed:

#### Filing Fees

FINRA Dispute Resolution assessed a filing fee\* for each claim:

Initial Claim filing fee	= \$	1,800.00
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*\*The filing fee is made up of a non-refundable and a refundable portion.*

#### 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, as a party, Citigroup Global Markets, Inc. is assessed the following:

Member surcharge	= \$	3,750.00
Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	5,500.00

#### Contested Motion for Issuance of a Subpoena Fees

Fees apply for each decision on a contested motion for the issuance of a subpoena.

One (1) Decision on a contested motion for the issuance of a subpoena		
One (1) arbitrator @ \$200.00	= \$	200.00
<b>Total Contested Motion for Issuance of Subpoenas Fees</b>	<b>= \$</b>	<b>200.00</b>

1. The Panel has assessed \$200.00 of the contested motion for issuance of subpoena fee to Respondent.

#### Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

January 10-14; 17-21; and 24-28, 2011, adjournment by the parties	= \$	1,200.00
<b>Total Adjournment Fees</b>	<b>= \$</b>	<b>1,200.00</b>

1. The Panel has assessed \$600.00 of the adjournment fees jointly and severally to Claimants.
2. The Panel has assessed \$600.00 of the adjournment fees to Respondent.

#### Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A 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:

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Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session= \$ 900.00  
 Pre-hearing conferences: October 11, 2010 1 session  
 January 7, 2011 1 session

Two (2) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 2,400.00  
 Pre-hearing conferences: November 24, 2009 1 session  
 August 3, 2010 1 session

Nineteen (19) Hearing sessions @ \$1,200.00/session = \$ 22,800.00  
 Hearing Dates: March 14, 2011 2 sessions  
 March 15, 2011 2 sessions  
 March 16, 2011 2 sessions  
 March 17, 2011 2 sessions  
 March 18, 2011 2 sessions  
 March 21, 2011 2 sessions  
 March 22, 2011 2 sessions  
 March 23, 2011 2 sessions  
 March 24, 2011 3 sessions

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Total Hearing Session Fees = \$ 26,100.00

1. The Panel has assessed \$26,100.00 of the hearing session fees to Respondent.

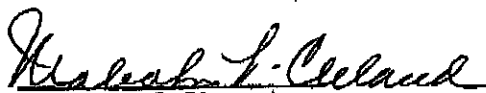
All balances are payable to FINRA Dispute Resolution and are due upon receipt.

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**ARBITRATION PANEL**

Malcolm T. Cleland	-	Public Arbitrator, Presiding Chairperson
Marc H. Schtul	-	Public Arbitrator
Patricia Mary Vondra	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
 Malcolm T. Cleland  
 Public Arbitrator, Presiding Chairperson

4/12/2011  
 Signature Date

\_\_\_\_\_  
 Marc H. Schtul  
 Public Arbitrator

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

\_\_\_\_\_  
 Patricia Mary Vondra  
 Non-Public Arbitrator

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

\_\_\_\_\_  
 Date of Service (For FINRA Dispute Resolution use only)

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Marc H. Schtul  
Public Arbitrator

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

*Patricia Mary Vondra*  
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Patricia Mary Vondra  
Non-Public Arbitrator

*4-12-2011*  
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Public Arbitrator

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Signature Date

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Patricia Mary Vondra  
Non-Public Arbitrator

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

4/18/11  
Date of Service (For FINRA Dispute Resolution use only)