

3015274766

**Award**  
**FINRA Dispute Resolution**

---

In the Matter of the Arbitration Between:

Claimants

Case Number: 08-03173

Donald E. Miller  
Maxine L. Miller

Respondent

Hearing Site: Seattle, Washington

Citigroup Global Markets, Inc.

---

Nature of the Dispute: Customers vs. Member

**REPRESENTATION OF PARTIES**

Claimants, Donald E. Miller and Maxine L. Miller, hereinafter collectively referred to as "Claimants": John A. Bender, Esq., Ryan Swanson & Cleveland, PLLC, Seattle, Washington.

Respondent, Citigroup Global Markets, Inc. ("CGMI"), hereinafter referred to as "Respondent": Hugo A. Higendorff, IV, Esq., Morgan Stanley Smith Barney, New York, New York.

**CASE INFORMATION**

Statement of Claim filed: September 8, 2008.

Claimants signed the Submission Agreement: August 29, 2008.

Statement of Answer filed by Respondent on or about: December 1, 2008.

Respondent signed the Submission Agreement: November 26, 2008.

**CASE SUMMARY**

Claimants asserted the following causes of action: (1) Violation of the Federal Securities Act of 1933; (2) Violation of the Washington State Securities Act; and (3) Violation of the Washington Consumer Protection Act. The causes of action relate to Claimants' purchases of shares in the Municipal Opportunity Fund Five, LLC ("Fund").

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. Compensatory damages of \$500,000.00;
2. Interest from February 7, 2007 to the date of the award; and
3. Attorney's fees and costs.

FINRA Dispute Resoluti  
Arbitration No. 08-03173  
Award Page 2 of 5

3015274766

At the close of the hearing, Claimants requested:

1. Recovery of losses under the Washington Securities Act of at least \$362,337.16;
2. 8% interest from December 2008 in the amount of \$43,380.51; and
3. Attorney's fees and costs.

Respondent requested dismissal of the Claimants' claims with prejudice

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

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

On June 10, 2010, Respondent filed a Motion in Limine to exclude references to prior arbitration awards at the arbitration hearing. During the hearing, the Panel considered the positions of the parties regarding Respondent's Motion in Limine. The Panel ruled that prior awards would not be admitted as substantive evidence, but if probative, would be considered only for purposes of qualifying an expert witness or that if a proper foundation was made, earlier sworn testimony from a prior arbitration could be considered for purposes of impeachment on cross-examination of the expert witness.

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. Respondent is liable for and shall pay to Claimants compensatory damages of \$405,818.12 inclusive of statutory pre-award interest calculated at 8%.
2. Respondent is liable for and shall pay to Claimants post-award simple interest on \$405,818.12 at the rate of 12% per annum. Post-award interest shall begin to run 10 days after this Award is transmitted by FINRA to Respondent until the Award is paid in full.
3. Respondent is liable for and shall pay to Claimants \$73,415.75 in attorney's fees as authorized by the Washington Securities Act.
4. Respondent is liable for and shall pay to Claimants \$643.69 in costs as authorized by the Washington Securities Act.
5. Claimants shall be responsible for their own expert witness fees.
6. Claimant initially brought claims under the Federal Securities Act, the Washington Securities Act and the Washington Consumer Protection Act. This case is decided under the Washington Securities Act claim only. All other claims are dismissed with prejudice.

FINRA Dispute Resoluti  
Arbitration No. 08-03173  
Award Page 3 of 4

3015274766

7. Any and all relief not specifically addressed herein is denied.

**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 = \$1,425.00

*\*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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, Citigroup Global Markets, Inc. is assessed the following:

Member surcharge = \$1,700.00  
Pre-hearing process fee = \$ 750.00  
Hearing process fee = \$2,750.00

**Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

October 21-23, 2009, adjournment by parties = \$1,125.00

- 1. The Panel assessed \$562.50 of the adjournment fee jointly and severally to Claimants.
- 2. The Panel assessed \$562.50 of the adjournment fee 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:

Two (2) Pre-hearing sessions with Panel @ \$1,125.00/session = \$2,250.00  
Pre-hearing conferences: February 3, 2009 1 session  
December 22, 2009 1 session

Six (6) Hearing sessions @ \$1,125.00/session = \$6,750.00  
Hearing Dates: June 15, 2010 2 sessions  
June 16, 2010 2 sessions  
June 17, 2010 2 sessions

---

Total Hearing Session Fees = \$9,000.00

The Panel has assessed \$9,000.00 of the hearing session fees to Respondent.

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


3015274766

FINRA Dispute Resolution  
Arbitration No. 08-03173  
Award Page 5 of 5

**ARBITRATION PANEL**

William J. Bender, J.D.	-	Public Arbitrator, Presiding Chairperson
Melvyn Jay Simburg	-	Public Arbitrator
Fredrick John Bahr	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
 \_\_\_\_\_  
 William J. Bender, J.D.  
 Public Arbitrator, Presiding Chairperson

6-25-2010  
 Signature Date

\_\_\_\_\_  
 Melvyn Jay Simburg  
 Public Arbitrator

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

\_\_\_\_\_  
 Fredrick John Bahr  
 Non-Public Arbitrator

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

6/24/10  
 \_\_\_\_\_  
 Date of Service (For FINRA Dispute Resolution use only)

3015274766

FINRA Dispute Resolution  
Arbitration No. 08-03173  
Award Page 5 of 5

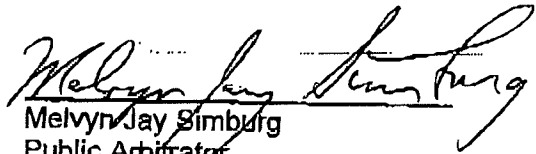
**ARBITRATION PANEL**

William J. Bender, J.D.	-	Public Arbitrator, Presiding Chairperson
Melvyn Jay Simburg	-	Public Arbitrator
Fredrick John Bahr	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
William J. Bender, J.D.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Melvyn Jay Simburg  
Public Arbitrator

\_\_\_\_\_  
*June 23, 2010*  
Signature Date

\_\_\_\_\_  
Fredrick John Bahr  
Non-Public Arbitrator

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

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

*6/24/10*

3015274766

FINRA Dispute Resolution  
Arbitration No. 08-03173  
Award Page 4 of 5

**ARBITRATION PANEL**

William J. Bender, J.D.  
Melvyn Jay Simburg  
Fredrick John Bahr

Public Arbitrator, Presiding Chairperson  
Public Arbitrator  
Non-Public Arbitrator

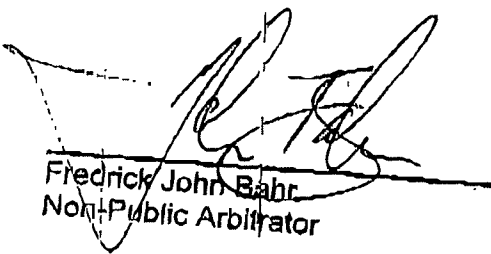
**Concurring Arbitrators' Signatures**

William J. Bender, J.D.  
Public Arbitrator, Presiding Chairperson

Signature Date

Melvyn Jay Simburg  
Public Arbitrator

Signature Date

  
Fredrick John Bahr  
Non-Public Arbitrator

06-23-2010  
Signature Date

6/24/10  
Date of Service (For FINRA Dispute Resolution use only)