

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Names of Claimants

Olivia Gibson Trust and  
Lisa Marie Gibson Trust

and

Case Number: 02-03434  
Hearing Site: Southfield, Michigan

Names of Respondents

Salomon Smith Barney  
n/k/a/ Citigroup Global Markets, Inc.,  
and Lawrence E. Seng

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**NATURE OF DISPUTE**

Customer v. Member Firm and Associated Person

**REPRESENTATION OF PARTIES**

Olivia Gibson Trust and Lisa Marie Gibson Trust ("Claimants") were represented by John J. McHugh, Esq., and Mark Davis, Esq., McHugh, Denune & McCarthy, Ltd., Sylvania, Ohio.

Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc. ("Citigroup") was represented by Joseph A. Sack, Esq., Citigroup Global Markets, Inc., New York, New York.

Lawrence E. Seng ("Seng") was represented by Joseph H. Pilkington, Esq., Toledo, Ohio.

**CASE INFORMATION**

The Statement of Claim was filed on or about June 5, 2002. The Amended Statement of Claim was filed on or about December 9, 2002. The Submission Agreements of Claimant Olivia Gibson Trust were signed on or about June 5, 2002, by Darlene N. Gibson, Trustee and John T. Madigan, Trustee.

Answer to Statement of Claim was filed by Respondent Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc. on or about September 26, 2002. Statement of Answer to Amended Statement of Claim was filed by Respondent Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc. on or about February 21, 2003. The Submission Agreement of Respondent Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc. was signed on or about September 26, 2002, by Victor A. Machcinski, Jr., Esq., Director, Associate General Counsel.

Answer to Statement of Claim was filed by Respondent Seng on or about September 25, 2002. Answer to Amended Statement of Claim was filed by Respondent Lawrence E. Seng on or about February 20, 2003. The Submission Agreement of Respondent Lawrence E. Seng was signed on or about September 24, 2002.

### **CASE SUMMARY**

Claimants asserted that Respondents failed to diversify the investments, failed to suitably invest and manage the accounts consistent with the stated investment objectives of the accounts and failed to communicate with the account owners with regard to investment recommendations and actions. The causes of action relate to the alleged concentration of the accounts in biotechnology and communication stocks in contravention of Claimants' stated conservative risk tolerance.

Unless specifically admitted in its Answer, Respondent Citigroup denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to state any cause of action upon which relief can be granted, the damages alleged to have been sustained are fictitious, the claims, in whole or in part, are time-barred, and the Co-Trustees' comparative fault, lack of diligence, and failure to manage the Trust account reasonably and responsibly bars any recovery of damages.

Unless specifically admitted in his Answer, Respondent Seng denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Claimant fails to state a claim upon which relief can be granted, any mismanagement of the account was the result of negligence and/or breach of fiduciary duty on the part of the Trustee, and the filing and prosecution of the Claim constitutes frivolous conduct because it has no basis in fact or law, and therefore all persons asserting the Claim should be required jointly and severally to reimburse the Respondent for his attorney fees and costs.

### **RELIEF REQUESTED**

Claimants requested an award in the amount of \$50,000.00 jointly and severally, plus costs, attorney fees, and other relief the Panel deems appropriate.

Respondent Citigroup requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs, expenses and attorneys' fees.

Respondent Seng requested that the claims asserted against him be dismissed in their entirety and that he be awarded his costs and attorneys' fees.

### **OTHER ISSUES CONSIDERED & DECIDED**

Claimant Lisa Marie Gibson Trust did not file with the NASD Dispute Resolution a properly executed submission to arbitration but having submitted a Statement of Claim is required to submit to arbitration pursuant to the Customer Agreement and Rule 10301 of the NASD

Code of Arbitration Procedure (the "Code") and having appeared and testified at the hearing is bound by the determination of the arbitration 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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

Respondent Citigroup moved for dismissal at hearing. The Panel denied the motion.

### **AWARD**

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc., and Lawrence E. Seng, are jointly and severally liable for and shall pay to Claimant, Olivia Gibson Trust, the sum of \$2,566.00 in compensatory damages;
- 2.) Respondents, Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc., and Lawrence E. Seng, are jointly and severally liable for and shall pay to Claimant, Lisa Marie Gibson Trust, the sum of \$2,632.00 in compensatory damages;
- 3.) That other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) That any relief not specifically enumerated, including punitive damages and attorney fees, is hereby denied with prejudice.

### **FEES**

Pursuant to 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 = \$175.00

**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 persons at the time of the events giving rise to the dispute. In this matter, the member firm is Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc.

Member surcharge	= \$ 875.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,000.00

**Forum Fees and Assessments**

The Arbitration 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:

Two (2) Pre-hearing sessions with Panel x \$600.00	= \$1,200.00
Pre-hearing conferences: May 15, 2003	1 session
June 19, 2003	1 session
Five (5) Hearing sessions x \$600.00	= \$3,000.00
Hearing Dates: October 22, 2003	2 sessions
October 23, 2003	3 sessions
<b>Total Forum Fees</b>	<b>= \$4,200.00</b>

The Arbitration Panel has assessed \$2,100.00 of the forum fees jointly and severally to Olivia Gibson Trust and Lisa Marie Gibson Trust.

The Arbitration Panel has assessed \$2,100.00 of the forum fees jointly and severally to Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc. and Lawrence E. Seng.

**Fee Summary**

Claimants, Olivia Gibson Trust and Lisa Marie Gibson Trust, are jointly and severally liable for:

Initial Filing Fee	= \$ 175.00
Forum Fees	= \$ 2,100.00
<b>Total Fees</b>	<b>= \$ 2,275.00</b>
<u>Less payments</u>	<u>= \$ 625.00</u>
<b>Balance Due NASD Dispute Resolution</b>	<b>= \$ 1,650.00</b>

Respondent, Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc., is liable for:

<u>Member Fees</u>	= \$ 2,625.00
<u>Total Fees</u>	= \$ 2,625.00
<u>Less payments</u>	= \$ 2,625.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondents, Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc. and Lawrence E. Seng, are jointly and severally liable for:

<u>Forum Fees</u>	= \$ 2,100.00
<u>Total Fees</u>	= \$ 2,100.00
<u>Less payments</u>	= \$ 1,000.00
Balance Due NASD Dispute Resolution	= \$ 1,100.00

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

**ARBITRATION PANEL**

Richard Joseph Rankin, Esq. - Public Arbitrator, Presiding Chair  
Harvey Frank - Public Arbitrator  
William H. Morris, CPA, CFA - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Richard Joseph Rankin, Esq.  
Richard Joseph Rankin, Esq.  
Public Arbitrator, Presiding Chair

11/05/03  
Signature Date

/s/ Harvey Frank  
Harvey Frank  
Public Arbitrator

11/03/03  
Signature Date

/s/ William H. Morris  
William H. Morris, CPA, CFA  
Non-Public Arbitrator

11/05/03  
Signature Date

11/06/03  
Date of Service (For NASD office use only)

NASD Dispute Resolution  
Arbitration No. 02-03434  
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Respondent, Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc., is liable for:

<u>Member Fees</u>	= \$ 2,625.00
<u>Total Fees</u>	= \$ 2,625.00
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Public Arbitrator, Presiding Chair

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*Harvey Frank*  
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 Harvey Frank  
 Public Arbitrator

*11-3-03*  
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NASD Dispute Resolution  
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Public Arbitrator

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

*W. H. Morris*  
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William H. Morris, CPA, CFA  
Non-Public Arbitrator

*11/5/03*  
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Respondents, Salomon Smith Barney n/k/a/ Citigroup Global Markets, Inc. and Lawrence E. Seng, are jointly and severally liable for:

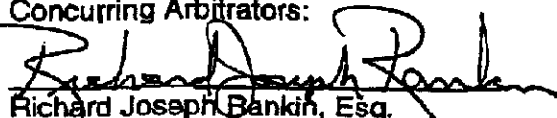
<u>Forum Fees</u>	= \$ 2,100.00
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