

**Award**  
**FINRA Office of Dispute Resolution**

---

In the Matter of the Arbitration Between:

Claimant

████████████████████

Case Number: ██████████

vs.

Respondent

Citigroup Global Markets Inc.

Hearing Site: San Francisco, California

---

Nature of the Dispute: Associated Person vs. Member

**REPRESENTATION OF PARTIES**

For Claimant ██████████ (“Claimant”): Michael Bessette, Esq., HLBS Law, Westminster, Colorado.

For Respondent Citigroup Global Markets Inc. (“Respondent”): Patrick S. Christensen, Esq., Bressler, Amery & Ross, P.C., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: April 4, 2018.  
Claimant signed the Submission Agreement: April 4, 2018.

Statement of Answer filed by Respondent on or about: May 23, 2018.  
Respondent signed the Submission Agreement: April 23, 2018.

**CASE SUMMARY**

Claimant requested expungement of references to two customer complaints, occurrence numbers ██████████ and ██████████ (“Underlying Complaints”), from his Central Registration Depository (“CRD”) records.

In the Statement of Answer, Respondent denied any allegations of wrongdoing and stated that it does not oppose the expungement request.

**RELIEF REQUESTED**

In the Statement of Claim, Claimant requested:

1. Expungement of the Underlying Complaints from his CRD records pursuant to:
  - a. FINRA Rule 2080(b)(1)(A) as the claim, allegation or information is factually impossible or clearly erroneous; and
  - b. FINRA Rule 2080(b)(1)(C) as the claim, allegation or information is false;

2. Damages in the sum of \$1.00 from Respondent; and
3. Any and all other relief that the Arbitrator deems just and equitable.

In the Statement of Answer, Respondent objected to Claimant's request for damages in the sum of \$1.00, and requested that no forum fees be assessed against Respondent and that all other fees associated with this matter be assessed solely against Claimant.

During the expungement hearing, Claimant withdrew his request for damages in the sum of \$1.00 from Respondent.

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

The Arbitrator acknowledges that she has read the pleadings and other materials filed by the parties.

On August 8, 2018, the Arbitrator and parties held the Initial Pre-hearing Conference. By Order that same day, among other things, the Arbitrator directed Claimant to serve the customers from the Underlying Complaints ("Customers") with all pleadings associated with their individual cases and notification of the expungement hearing.

On August 27, 2018, Claimant provided a copy of his notices to the Customers regarding the Statement of Claim and notice of the expungement hearing. On September 5, Claimant provided an Affidavit of Service advising that the customer in occurrence [REDACTED] had been served with the Statement of Claim

The Arbitrator conducted a recorded telephonic hearing on November 5, 2018 so the parties could present oral argument and evidence on Claimant's request for expungement. Respondent participated in the expungement hearing and did not oppose the request for expungement. The Customers did not participate in the expungement hearing. The Arbitrator determined that the Customers had been properly served with the Statement of Claim and received due notice of the hearing.

The Arbitrator reviewed Claimant's BrokerCheck® Report and found that the Underlying Complaints were denied (and not settled) and therefore there were no settlement agreements to review.

The Arbitrator noted that Claimant did not previously file a claim requesting expungement of the same disclosures in the CRD.

In recommending expungement, the Arbitrator relied upon the following documentary or other evidence: Statement of Claim; Statement of Answer; and Claimant's testimony during the expungement hearing.

The Arbitrator has agreed that a handwritten, signed Award may be entered.

### **AWARD**

After considering the pleadings, the testimony and evidence presented at the expungement hearing, the Arbitrator has decided in full and final resolution of the issues

submitted for determination as follows:

The Arbitrator recommends the expungement of all references to occurrence numbers [REDACTED] and [REDACTED] from registration records maintained by the CRD, for Claimant [REDACTED] (CRD# [REDACTED]), with the understanding that, pursuant to Notice to Members 04-16, Claimant [REDACTED] must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 13805 of the Code of Arbitration Procedure ("Code"), the Arbitrator has made the following Rule 2080 affirmative findings of fact for both occurrence numbers [REDACTED] and [REDACTED]:

The claim, allegation, or information is factually impossible or clearly erroneous;  
and

The claim, allegation, or information is false.

**Occurrence Number [REDACTED]**

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

In October 2006, the customer ("Mr. V") was 72 years old, a venture capitalist and a highly sophisticated investor who had been investing since 1972. Mr. V had a very significant annual income and liquid net worth. Mr. V had been a client of Claimant since 2003. Mr. V used only Claimant and Respondent for handling distributions for a venture capital firm he founded. Claimant did not provide any investment advice to Mr. V, and never purchased investments on his behalf. At no time did Claimant execute any trades on Mr. V's behalf without first obtaining his authorization.

On November 24, 2006, Mr. V alleged in a complaint that he had placed a market order to sell Google stock but told Claimant that he did not want to trade it in a down market. Mr. V sought compensatory damages in excess of \$5,000.00.

The Arbitrator finds that Mr. V's allegation that on October 24, 2006 he placed a market order to sell Google stock but that he did not want to trade it in a "down market" to be clearly erroneous, factually impossible and false. The Arbitrator finds that Mr. V directed Claimant to put in a sell for Google stock at the market order. Claimant confirmed with Mr. V twice that he was willing to sell at the market price. Since Claimant had a market order from Mr. V, he was bound to that order. On October 24, 2006, Claimant tried to reach Mr. V to tell him that the Google stock was down but could not reach him. With his manager's permission, Claimant even offered to break the trade; however, Mr. V declined the offer.

On January 10, 2007, after completing a thorough investigation, Respondent denied Mr. V's claim. Respondent found that Mr. V had given Claimant the market order and that Claimant had followed Mr. V's exact instructions. Mr. V did not pursue his claim in arbitration or court, and Respondent does not oppose the expungement request.

**Occurrence Number** [REDACTED]

The Arbitrator has made the above Rule 2080 findings based on the following reasons:

The customer's ("Mr. S") allegation that his investment in the Citigroup Corporate Special Opportunities Hedge Fund ("Citigroup Fund") was inconsistent with his desired investment criteria is clearly erroneous, factually impossible and false.

Mr. S was a sophisticated investor who was a former investment banker at Morgan Stanley. He had a significant annual income and liquid net worth. In May of 2006, Mr. S met with Claimant to discuss his investment objectives. Claimant ascertained Mr. S' objective to be capital appreciation with secondary investment objectives of speculation and income, and his risk tolerance to be moderate.

Over the course of at least two meetings and a discussion of many investments, Mr. S selected the Citigroup Fund, which was a fund that purchased bank loans. At that time in the market cycle, bank loans were an attractive investment opportunity and Respondent was perceived to have the preeminent team.

Claimant explained in detail to Mr. S Citigroup Fund's terms, risks, fees, advantages and disadvantages. In connection with his purchase of the Citigroup Fund, Mr. S received and completed the fund's Private Placement Memorandum. Subsequently, Claimant met with Mr. S quarterly to review the performance of Mr. S' portfolio. All investments in the portfolio were either managed accounts or in investment vehicles such as the Citigroup Fund.

After the collapse of Lehman Brothers on September 15, 2008, the Citigroup Fund lost almost all of its invested capital and was liquidated by Respondent in November 2008. On November 18, 2008, Mr. S sent an email to Claimant alleging that his investment was inconsistent with his desired criteria. Claimant forwarded the email to Respondent's compliance department which filed it as a formal complaint. Mr. S sought damages in excess of \$5,000.00.

On April 20, 2009, after completing a thorough investigation, Respondent denied the claim. The Arbitrator found the claim to be clearly false as no one foresaw the market collapse of 2008, and Claimant made suitable recommendations and performed his duties as a representative in a thorough, ethical and professional manner. Respondent liquidated the Citigroup Fund because it lost almost all of its invested capital. Mr. S did not pursue his claim in arbitration or court, and Respondent does not oppose the expungement request.

## FEES

Pursuant to the Code, the following fees are assessed:

### Filing Fees

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

Initial Claim Filing Fee	=\$ 50.00
--------------------------	-----------

*\*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, Respondent is assessed the following:

Member Surcharge	=\$ 150.00
------------------	------------

### Hearing Session Fees and Assessments

The Arbitrator 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:

One (1) pre-hearing session with a single arbitrator @ \$50.00/session	=\$ 50.00
Pre-hearing conference: August 8, 2018	1 session

One (1) hearing session on expungement request @ \$50.00/session	=\$ 50.00
Hearing Date: November 5, 2018	1 session

---

Total Hearing Session Fees	=\$ 100.00
----------------------------	------------

The Arbitrator has assessed \$100.00 of the hearing session fees to Claimant.

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

**ARBITRATOR**

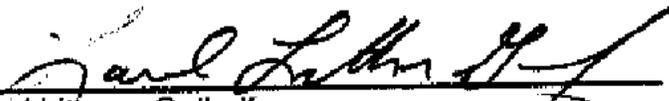
Laurel Littman Gothelf

-

Sole Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument which is my award.

**Arbitrator's Signature**

  
\_\_\_\_\_  
Laurel Littman Gothelf  
Sole Public Arbitrator

11-15-18  
Signature Date

November 15, 2018  
Date of Service (For FINRA Office of Dispute Resolution office use only)