

**Award  
FINRA Dispute Resolution**

---

In the Matter of the Arbitration Between:

Claimants

Case Number: 10-04929

Dr. Nasirdin H. Madhany and Zeenat N. Madhany, individually and as Trustees of the Zeenat Madhany Revocable Trust and Dr. Nasirdin H. Madhany and Zeenat N. Madhany as Trustees of the Nasirdin H. Madhany Revocable Trust

vs.

Respondents

Hearing Site: Orlando, Florida

Scott Andrew King  
Citigroup Global Markets, Inc. f/k/a Smith Barney

---

Nature of the Dispute: Customers vs. Associated Person and Member

The case proceeded under the Optional All Public Panel Rule/All Public Panel

**REPRESENTATION OF PARTIES**

For Claimants Dr. Nasirdin H. Madhany and Zeenat N. Madhany, individually and as Trustees of the Zeenat Madhany Revocable Trust and Dr. Nasirdin H. Madhany and Zeenat N. Madhany as Trustees of the Nasirdin H. Madhany Revocable Trust: Jeffrey Sonn, Esq., Jeffrey Erez, Esq. and Adam Nativ, Esq., Sonn & Erez, PLC, Fort Lauderdale, Florida.

Respondent Scott Andrew King ("King") appeared pro se.

For Respondent Citigroup Global Markets, Inc. f/k/a Smith Barney ("CGMI"): Jon A. Jacobson, Esq. and Jason Fedo, Esq., Greenberg Traurig, P.A., West Palm Beach, Florida.

**CASE INFORMATION**

Statement of Claim filed on or about: October 21, 2010.

Amended Statement of Claim filed on or about: December 16, 2010.

Dr. Nasirdin H. Madhany signed the Submission Agreement: January 7, 2011.

Zeenat N. Madhany signed the Submission Agreement: January 7, 2011.

Dr. Nasirdin H. Madhany as Trustee of the Zeenat Madhany Revocable Trust signed the Submission Agreement: January 7, 2011.

Zeenat N. Madhany as Trustee of the Zeenat Madhany Revocable Trust signed the Submission Agreement: January 7, 2011.

Dr. Nasirdin H. Madhany and Zeenat N. Madhany as Trustees of the Nasirdin H. Madhany Revocable Trust signed the Submission Agreement: January 9, 2013.

Scott Andrew King did not file a Statement of Answer or sign the Submission Agreement.

Statement of Answer filed by Respondent CGMI on or about: February 18, 2011.  
Respondent CGMI signed the Submission Agreement: January 28, 2011.

Respondent CGMI's Rule 12504(a) Motion to Dismiss ("Motion to Dismiss") filed on or about: June 7, 2011.

Claimants' Opposition to the Motion to Dismiss filed on or about: August 5, 2011.

Respondent CGMI's Reply in Support of its Motion to Dismiss filed on or about: August 19, 2011.

Claimants' Agreed Motion for Leave To Amend ("Agreed Motion to Amend") filed on or about: December 13, 2012.

Second Amended Statement of Claim filed on or about: January 6, 2013.

### **CASE SUMMARY**

Claimants asserted the following causes of action: breach of fiduciary duty, negligence, negligent supervision, fraud by omission, misrepresentation and breach of contract. The causes of action relate to Claimants' investments in securities, including two promissory notes, used to finance real estate developments known as Moorings at Carrabelle, Inc., Moorings Development, Inc. and Pirates Cove Marina, LLC.

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

### **RELIEF REQUESTED**

In the Statement of Claim, as amended, Claimants requested compensatory damages of approximately \$1,000,000.00, punitive damages, interest, costs and such other and further relief the Panel deemed just and proper.

At the close of the hearing, Claimants requested compensatory damages of \$1,070,000.00 plus a loan guarantee of \$12,000,000.00.

Respondent CGMI requested that the Statement of Claim, as amended, be denied in its entirety with prejudice, costs, a recommendation that this matter be expunged from the Central Registration Depository ("CRD") records of Respondent King and such other relief that the Panel deemed fair and equitable.

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

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

Respondent King did not file with FINRA Dispute Resolution a properly executed Submission Agreement but is required to submit to arbitration pursuant to the Code of Arbitration Procedure ("Code") and is bound by the determination of the Panel on all issues submitted.

On or about December 16, 2010, Claimants filed an Amended Statement of Claim which, among other things, withdrew Claimants' claims against Respondent King, without prejudice.

In the Motion to Dismiss, Respondent CGMI asserted, among other things, the following: Claimants have already released Respondent CGMI from the claims at issue in this case; and to the extent that Claimants' claims were not released, the claims must still be dismissed because Respondent CGMI was not associated with Claimants' accounts. In their Opposition to the Motion to Dismiss, Claimants asserted, among other things, the following: the Motion to Dismiss is legally unsupportable; the claims that Respondent CGMI attempts to have dismissed accrued two years after the release was executed; and the release only refers to claims that accrued as of the date of the release. On or about September 9, 2011, the Panel denied Respondent CGMI's Motion to Dismiss.

In the Agreed Motion to Amend, Claimants requested leave to file a Second Amended Statement of Claim for the purpose of adding the Nasirdin H. Madhany Revocable Trust as a Claimant. On or about January 6, 2013, the Panel granted Claimants' Agreed Motion to Amend.

During the evidentiary hearing, Respondent King orally renewed his request for expungement.

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 recorded in-person 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:

1. Respondent CGMI is liable for breach of fiduciary duty as financial advisor to Claimants as well as negligent supervision and shall pay Claimants compensatory damages in the following amounts:
  - a. \$400,000.00 for Claimants' investment in Pirates Cove; and
  - b. \$647,334.00 for Claimants' investment in the Moorings.
2. The Panel determined that Claimants and other investors signed a loan guarantee in an effort to protect their investment in the Moorings in the amount of \$12,000,000.00. As a result of said guarantee, a judgment was entered against Claimants and the other investors, jointly and severally, on October 18, 2012, in the amount of \$10,031,220.25, in the case styled *Wachovia Bank, N.A. v. Robert C. Brooks et al.*; Circuit Court, Second Judicial Circuit, Leon County, Florida; Case No.

2009-CA-3786. Evidence was introduced at the hearing which indicated that Claimants had attempted to settle their liability on said judgment for the sum of \$2,100,000.00. However, no evidence was introduced to indicate whether said offer was accepted and if so, whether Claimants were given a full Release and Satisfaction from said judgment.

3. It is the intent of this Panel that Respondent CGMI be held liable for and shall pay to Claimants the damages suffered by Claimants arising from said judgment, except for costs, interest and attorney fees. Therefore, Respondent CGMI is liable for and shall pay Claimants \$2,100,000.00 and any additional monies, if any, that they have expended or have agreed to pay to settle their liability under said judgment. Respondent CGMI shall indemnify and hold Claimants harmless for any additional damages not to exceed \$10,031,220.25, that exist or may arise, for which Claimants could be held liable, as a result of said judgment. Said indemnity shall continue until or unless said judgment is satisfied as against Claimants and a Release and Satisfaction of Judgment is filed on their behalf.
4. Respondent CGMI is liable and shall pay Claimants costs in the sum of \$37,967.73.
5. Respondent King's request for expungement is denied.
6. Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, 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 = \$ 1,575.00

*\*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 CGMI is assessed the following:

Member Surcharge	= \$ 2,250.00
Pre-Hearing Processing Fee	= \$ 750.00
Hearing Processing Fee	= \$ 4,000.00

#### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

June 11-15, 2012, joint adjournment request = \$ 1,200.00

The Panel has assessed the total adjournment fee of \$1,200.00 jointly and severally to Claimants.

**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:

June 11-15, 2012, joint adjournment request = \$ 300.00

The Panel has assessed the total three-day cancellation fee of \$300.00 jointly and severally to Claimants.

**Discovery-Related Motion Fees**

Fees apply for each decision rendered on a discovery-related motion.

Two (2) Decisions on discovery-related motions on the papers  
with one (1) arbitrator @ \$200.00/decision = \$ 400.00  
Respondent CGMI submitted one (1) discovery-related motion  
Respondent King submitted one (1) discovery-related motion

---

Total Discovery-Related Motion Fees = \$ 400.00

The Panel has assessed \$300.00 the discovery-related motion fees jointly and severally to Claimants.

The Panel has assessed \$100.00 the discovery-related motion fees to Respondent CGMI.

**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  
with one (1) arbitrator @ \$200.00 = \$ 200.00

One (1) Decision on a contested motion for the issuance of a subpoena  
with two (2) arbitrators @ \$400.00 = \$ 400.00

---

Total Contested Motion for Issuance of a Subpoena Fees = \$ 600.00

The Panel has assessed \$500.00 of the contested motion for issuance of a subpoena fees jointly and severally to Claimants.

The Panel has assessed \$100.00 of the contested motion for issuance of a subpoena fees to Respondent CGMI.

**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:

Three (3) Pre-hearing sessions with a single arbitrator @ \$450.00/session = \$ 1,350.00

Pre-hearing conferences:	December 13, 2011	1 session
	May 21, 2012	1 session
	May 30, 2012	1 session

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00/session = \$ 3,600.00

Pre-hearing conferences:	June 7, 2011	1 session
	September 9, 2011	1 session
	December 20, 2012	1 session

Eleven (11) Hearing sessions @ \$1,200.00/session = \$13,200.00

Hearing Dates:	August 12, 2013	2 sessions
	August 13, 2013	2 sessions
	August 14, 2013	2 sessions
	August 15, 2013	2 sessions
	August 16, 2013	3 sessions

---

Total Hearing Session Fees	= \$18,150.00
----------------------------	---------------

The Panel has assessed \$8,475.00 of the hearing session fees jointly and severally to Claimants.

The Panel has assessed \$9,675.00 of the hearing session fees to Respondent CGMI.

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

**ARBITRATION PANEL**

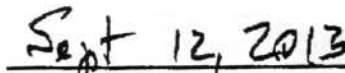
Robert J. Walter	-	Public Arbitrator, Presiding Chairperson
Floyd Edward Roberts, III	-	Public Arbitrator
Theodore Haynes	-	Public Arbitrator

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

**Concurring Arbitrators' Signatures**



Robert J. Walter  
Public Arbitrator, Presiding Chairperson



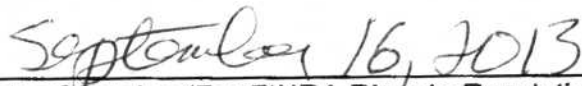
Signature Date

\_\_\_\_\_  
Floyd Edward Roberts, III  
Public Arbitrator

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

\_\_\_\_\_  
Theodore Haynes  
Public Arbitrator

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



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

**ARBITRATION PANEL**

Robert J. Walter

Floyd Edward Roberts, III

Theodore Haynes

Public Arbitrator, Presiding Chairperson

Public Arbitrator

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.

**Concurring Arbitrators' Signatures**

Robert J. Walter

Public Arbitrator, Presiding Chairperson

Signature Date

  
Floyd Edward Roberts, III

Public Arbitrator

9/13/2013  
Signature Date

Theodore Haynes

Public Arbitrator

Signature Date

September 16, 2013  
Date of Service (For FINRA Dispute Resolution office use only)



**ARBITRATION PANEL**

Robert J. Walter	-	Public Arbitrator, Presiding Chairperson
Floyd Edward Roberts, III	-	Public Arbitrator
Theodore Haynes	-	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.

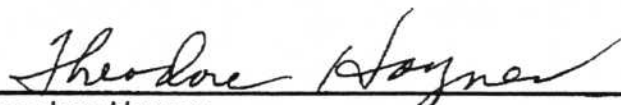
**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Robert J. Walter  
Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
Floyd Edward Roberts, III  
Public Arbitrator

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

  
\_\_\_\_\_  
Theodore Haynes  
Public Arbitrator

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

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