

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

JUDITH GOLDMAN and  
KENNETH B. GOLDMAN

Plaintiffs,

v.

CITIGROUP GLOBAL MARKETS INC.,  
BARRY GUARIGLIA,  
FINRA,  
FREDERICK PIERONI

Defendants

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CASE NO.: \_\_\_\_\_

**COMPLAINT**

Judith Goldman and Kenneth B. Goldman, by way of this Complaint against Citigroup Global Markets Inc., (“CGMI”), Barry Guariglia (“Guariglia”), FINRA, the Financial Industry Regulatory Authority, and Frederick Pieroni (“Pieroni” or “Mediator”) allege as follows:

**PARTIES**

1. Judith Goldman and Kenneth B. Goldman (“Plaintiffs”) ages 79 and 80, are husband and wife and citizens of the State of New Jersey.
2. CGMI is a financial services company with offices throughout various states.
3. Barry Guariglia, during all times relevant to this Complaint, was a registered representative of Merrill Lynch, Morgan Stanley Smith Barney, Citigroup and ultimately CGMI.
4. Upon information and belief, Guariglia is a citizen of New York.
5. FINRA is the Financial Industry Regulatory Agency created under the auspices of the Securities & Exchange Commission (“SEC”).
6. Frederick Pieroni is a FINRA Mediator and upon information and belief a resident of New Jersey.

### STATEMENT OF JURISDICTION

7. CGMI and FINRA both have offices in Philadelphia.

8. This Court has jurisdiction under 28 U.S.C. § 1331 based on federal-question jurisdiction over suits “in which a well-pleaded complaint establishes either that federal law creates the cause of action or that the plaintiff’s right to relief necessarily depends on resolution of a substantial question of federal law.” *See Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 27-28 (1983).

9. The matters at issue involve an on-going FINRA Arbitration proceeding and the egregious conduct of FINRA, FINRA Arbitrators, a FINRA Mediator, FINRA Registered Representative, and FINRA Member Firm, thus implicating the Federal Arbitration Act 9 USC. ¶ 1 et seq., (“FAA”), and a quasi-governmental agency governed by the federal securities acts.

10. Under the FAA, the jurisdiction of the state wherein the arbitration is conducted controls matters relevant to arbitration; the arbitration hearings are scheduled to be conducted in Philadelphia on August 21 through August 24, 2012 while prehearing matters and motions have routinely been conducted from this district involving Plaintiffs, FINRA, the Mediator, and the current Arbitration Panel.

11. Venue in this district is proper under 28 USC 1391(b) because the arbitration hearings in this matter are scheduled to be conducted in Philadelphia and because prehearing matters and motions have routinely been conducted from this district.

12. In addition, one of the Panel members resides in this district.

13. The complaint in this matter, therefore implicates federal law that is apparent from the face of the complaint and not from a defense or anticipated defense. *See Franchise Tax Bd* 463 U.S. 1, 27-28 (1983).

14. While this complaint implicates federal statutes, the matter need not be strictly statutory (*see id.* 463 U.S. at 9-11); federal common law will suffice. *National Farmers Union Ins. Co. v. Crow Tribe*, 471 U.S. 845, 850, (1985).

15. The FAA is subject to both statutory and common law interpretation.

16. Moreover, this complaint involves interpretations of the FAA and federal common law as well as claims and procedures under the Federal Rules of Civil Procedure, Rule 81(a)(6)(B) “Other Proceedings” (“These rules, to the extent applicable, govern proceedings under the following laws, except as these laws provide other procedures ... 9 U.S.C., relating to arbitration”).

17. Therefore, this Court has jurisdiction under 28 U.S.C. § 2201(a) Creation of remedy (“In a case of actual controversy within its jurisdiction ... any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought”); *see also* 28 U.S.C. § 2202 “Further relief” (“Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.”)

18. Finally, this Court has jurisdiction to issue the sought after injunction under Fed. R. Civ. P. Rule 65 (“Injunctions and Restraining Orders ... (a) Preliminary Injunction ... and (b) (1)(A)(B) Temporary Restraining Order ... The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the

movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.”)

#### **STATEMENT OF RELEVANT FACT**

19. Plaintiffs incorporate by reference the foregoing paragraphs as though restated and realleged herein verbatim.

20. Sometime in the 1990s, Plaintiffs began an investment advisory relationship with Guariglia.

21. Until sometime in 2008, Guariglia was a registered securities broker with Merrill Lynch then with Morgan Stanley Smith Barney, Citigroup, and ultimately CGMI.

22. Guariglia changes companies right as the financial industry collapsed in 2008 and 2009.

23. Due to endemic fraud and mismanagement, these companies were combined under the “Too Big to Fail” government program.

24. CGMI is a patchwork of failed companies designed to save Citigroup, one of the most notorious fraudulent actors and 2008 failures.

25. CGMI roots extend to 1997 when the “Travelers Group” acquired Salomon Brothers to create “Salomon Smith Barney.”

26. In 1998, Travelers merged with Citicorp to create the largest single financial services company in the world “Citigroup”; in 2008, Citigroup’s fraudulent business practices and mismanagement, like those of Lehman Brothers, Bear Stearns, AIG and others rendered it bankrupt; under “Too Big to Fail” Citigroup and Morgan Stanley merged into “Morgan Stanley Smith Barney”; despite astronomical government bailouts, Morgan Stanley was still essentially bankrupt and forced to accept a \$9 billion dollar investment from Mitsubishi UFJ Financial



Group in exchange for a 21% stake in Morgan Stanley; in June 2009, this miasma combined into “Morgan Stanley Smith Barney, Citigroup” or CGMI; Merrill Lynch was also essentially bankrupt 2008 but saved by its notorious merger with Bank of America, also a failed institution.

27. Guariglia moved among these failed institutions throughout 2008 and 2009, and while in the midst of the financial crisis perpetrated securities fraud on Plaintiffs.

28. When this fraud was discovered by Plaintiffs, Plaintiffs submitted a “Statement of Claims” in 2010 to FINRA in accordance with a mandatory FINRA arbitration provision contained in the various contracts between Guariglia, his firms and Plaintiffs.

29. In their Statement of Claims, Plaintiffs demanded \$900,000 in damages.

30. Plaintiffs’ claims against Guariglia, Merrill Lynch, Morgan Stanley Smith Barney, Citigroup, and CGMI, included Securities Fraud, Fraudulent Misrepresentation, Breach of Fiduciary Duty, Aiding and Abetting Breach, Breach of Contract, Negligence, and violation of Rule 10b-5, Lack of Supervision and Lack of Suitability.

31. Throughout the bitter prehearing arbitration discovery process, which has yet to concluded, the consumer Plaintiffs have rightfully accused these FINRA member firms, and Guariglia of concealing relevant probative evidence – emails in particular – from Plaintiffs.

32. In order to avoid or delay discovery, Merrill Lynch suggested that the FINRA arbitration be adjourned and a FINRA Mediation commence.

33. FINRA induces consumers to engage in mediation for the benefits FINRA advertises. *See* “Benefits of Mediation” (“Mediation offers greater confidentiality than arbitration.”) [www.finra.org/ArbitrationMediation/Parties/Overview/MediationAnAlternatePath](http://www.finra.org/ArbitrationMediation/Parties/Overview/MediationAnAlternatePath).

34. All parties agreed.

35. Thus, FINRA Mediation commenced under FINRA's Code of Mediation Procedure Rules 14000 *et seq.*, with a FINRA Mediator, one Frederick Pieroni appointed.

36. In the mediation, Merrill Lynch settled all of Plaintiffs claims against Merrill Lynch and Guariglia for the time Plaintiffs accounts were with Merrill Lynch.

37. Thus, Guariglia and CGMI remain as the only party defendants in the FINRA Arbitration set for August 21 through August 24, 2012.

38. However, by their conduct in the FINRA mediation, and the conduct of FINRA Mediator Frederick Pieroni, and FINRA itself, CGMI, Guariglia, FINRA, and FINRA Mediator Pieroni are defendants in this case for Breach of Contract, and an accompanying Motion for a Temporary Restraining Order to cure the breach and prevent further breach.

39. Under the Federal Securities Act, all registered representatives and securities firms such as CGMI and its associated persons such as Guariglia, must be registered with FINRA.

40. FINRA operates under the auspices of the Securities & Exchange Commission ("SEC").

41. FINRA oversees 4,400 brokerage firms, approximately 162,930 branch offices, and 630,020 registered securities representatives.

42. Its stated mission was/is to protect America's investors by making sure the securities industry operates fairly and honestly.

43. FINRA is both a regulatory agency, and disturbingly, a Dispute Resolution Agency wherein consumers are forced to present their claims to FINRA whose members sit in judgment over consumer claims against other members.

44. Because history has shown the SEC and FINRA to be failed institutions, and the entire concept of a ‘self-regulated’ securities industry an utter failure, the folly that recidivists would rule impartially against their own members has shown predictable results; consumers almost always lose, rarely recover anything of substance, and virtually never are awarded punitive damages in FINRA Arbitration.

45. Nevertheless, under the FAA, Plaintiffs are obligated to arbitrate in the FINRA Arbitration forum.

46. Of course, FINRA and the current FINRA Panel of arbitrators stubbornly protected Merrill Lynch, Morgan Stanley Smith Barney, Citigroup, and CGMI by refusing to allow Plaintiffs the fundamental discovery that FINRA’s own rules mandate. *See* FINRA Arbitration Rules 12504 – 12509.

47. For example, Guariglia has yet to produce a single interoffice email for the decades he has dealt with Plaintiffs through Merrill Lynch, Morgan Stanley Smith Barney, Citigroup, and CGMI.

48. Thus the current condition of the arbitration process, which has the hearings set for August 21 through August 24, 2012, still shows the discovery period incomplete and blatant signs of corruption and collusion marring the pending hearings.

49. It must be noted that Merrill Lynch did in fact honor its promise to mediate in good faith and certainly did so.

50. CGMI however, promised to mediate but declared at the outset of the mediation that it would not mediate at all.

51. With that declaration, Plaintiffs demanded that CGMI and its attorneys leave the mediation.

52. CGMI and its attorneys refused to leave.

53. Thus, CGMI and its lawyers were allowed to spy on every confidential discussion and negotiation between Plaintiffs, the Mediator and Merrill Lynch, and were permitted to do so by the FINRA Mediator.

54. This reprehensible conduct gave CGMI and its lawyers, the priceless benefits of listening in on highly confidential discussions and negotiations involving Plaintiffs' claims.

55. Worse, although expected to be kept "confidential" by all parties including the Mediator, when Plaintiffs demanded that the Arbitration Panel "Bar Greenberg Traurig from Further Representing CGMI and Guariglia in the Arbitration Proceedings" CGMI actually procured a false affirmation from the Mediator to submit with CGMI's Response to Plaintiffs above motion.

56. In his affirmation, Mediator Pieroni perjured himself by stating "under penalty of perjury ... at no time during the mediation did CGMI or its counsel 'declare' or imply that it 'abjectly refuses to mediate' ... at no time during the mediation was CGMI or its counsel asked to leave the mediation, nor did counsel refuse to leave the mediation ... [i]t is my opinion that CGMI and its counsel acted in good faith throughout the course of the mediation[.]" *But see*, FINRA Mediation Rule 14109 (f) - (g) ("(f) The parties agree to attempt, in good faith, to negotiate a settlement of the matter submitted to mediation." ... (g) Mediation is intended to be private and confidential.")

57. Proof that Mediator Pieroni's statement is false is not only Plaintiff's testimony but the unassailable fact that CGMI offered absolutely nothing at all to Plaintiffs.



58. Instead, counsel for CGMI, Greenberg Traurig's George Sullivan, actually threatened Mr. Goldman with countersuits and sanctions in the presence of all parties including the Mediator.

59. Much worse, Mediator Pieroni submitted the false affirmation to the Panel Chairman with whom he shares an undisclosed relationship, which was unknown and undisclosed to Plaintiffs.

60. Once the affirmation was served on Plaintiffs as an Exhibit to CGMI's response to Plaintiffs Motion to Bar Greenberg Traurig, the relationship between the Panel Chair and the Mediator was still concealed until sometime in February when Plaintiffs were nonchalantly informed by the Panel, "At the outset of the telephonic conference [among the Panel to deliberate Claimants' Motion to Bar CGMI's legal counsel from the arbitration proceedings] the chairperson [James W. Geiger] advised the panel members that he has a conflict ... out of the fact that the mediator is Mr. Fred Pieroni."

61. Plaintiffs vehemently protested this concealed relationship and utter breach of FINRA Mediation Rules of confidentiality and demanded that FINRA and the Panel take immediate action against Greenberg Traurig, Guariglia, and CGMI for procuring the services of an obviously untruthful Mediator who contacted a FINRA Arbitration Panel with whom he had an undisclosed relationship with the Panel's Chair.

62. With these unprecedented interactions, Plaintiffs have been deprived of an impartial and untainted Arbitration Panel, and also the discovery, which FINRA rules mandate.

63. Accordingly, Plaintiffs demanded that the current Panel resign so that a new panel can be appointed by FINRA.

64. When the panel refused to resign, Plaintiffs contacted FINRA's hierarchy, the SEC, and the newly formed Consumer Protection Agency but to no avail.

65. Accordingly, Plaintiffs file this Breach of Contract action against Defendants for breach of the FINRA Arbitration and FINRA Mediation agreements.

66. In addition, Plaintiffs seek an injunction barring FINRA from allowing the current panel from conducting any further proceedings in this matter.

**BREACH OF CONTRACT BY CGMI, GUARIGLIA, FINRA, and FREDERICK  
PIERONI**

67. Plaintiffs incorporate the foregoing paragraphs as though restated and realleged herein verbatim.

68. Individually and collectively, CGMI, Guariglia, FINRA, and Mediator Pieroni breached express and implied terms and conditions of the FINRA's Arbitration and Mediation contracts.

69. By so doing, Plaintiffs have been denied "the benefit of the bargain" of FINRA Arbitration and Mediation contracts as expressed in FINRA Rules. *See* FINRA Rules 12000 *et seq.*, and 14000 *et seq.*

70. Because these parties have denied Plaintiffs the express and implied contractual terms and conditions under FINRA rules, a full, fair, complete, and impartial arbitration hearing by the current Panel is impossible.

71. Importantly, all parties to the October 2011 FINRA Mediation, in particular even the FINRA Mediator himself, were specifically required to keep the FINRA Mediation private and confidential:

The parties and the mediator agree not to disclose, transmit, introduce, or otherwise use opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the mediation by any party or the mediator as evidence in any

action at law, or other proceeding, including a lawsuit or arbitration, unless authorized in writing by all other parties to the mediation or compelled by law, except that the fact that a mediation has occurred shall not be considered confidential.

FINRA Code of Mediation Rule 14109 (g)(1) (emphasis added).

72. In utter defiance of these rules, not only did CGMI, through its counsel, Greenberg Traurig, and attorney George Sullivan declare at the outset of the mediation that CGMI abjectly refuses to mediate, they colluded with the Mediator to directly contact the Panel Chair whom the Mediator knew unbeknownst and undisclosed to Plaintiffs.

73. Worse, CGMI, its lawyers, Guariglia, and the Mediator conspired to submit a false and unfairly prejudicial statement to a Panel and Panel Chairman who the Mediator knew personally, and without making that disclosure to Plaintiffs beforehand, in direct violation of ironclad FINRA rules, which prohibited such contact.

74. Faced with this appalling conduct and breach of contract, FINRA rules and ethics, Plaintiffs contacted FINRA's hierarchy, namely Kenneth Andrichik, Julie Crotty, Mignon McLemore, Edward Sihaga, Todd Saltzman, and Patricia Williams, all officials with the separate FINRA Arbitration and Mediations departments.

75. In addition, Plaintiffs contacted Mary L. Schapiro, head of the SEC, the federal agency that oversees FINRA.

76. Plaintiffs also contacted Richard Cordray of the newly created Consumer Financial Protection Bureau.

77. Not one person contacted took any action whatsoever to protect these consumers, or discipline the Mediator, CGMI, its law firm, or Guariglia, or to instruct the current Panel to resign.

78. Because none of these officials took any action whatsoever, and because the Panel refuses to resign, and of equal importance, because the Panel refuses to compel CGMI and Guariglia to produce the fundamental discovery FINRA rules mandate, Plaintiffs have no choice but to petition this Court for damages, and an order compelling further breach of contract.

79. By engaging in breach of contract, and continuing breach, and furthermore by refusing to cure, Plaintiffs' rights under FINRA rules and regulations, which constitute the contract between the parties compelled to arbitrate in the FINRA forum, have been sacrificed and continue to be deprived by Defendants refusal to provide Plaintiffs its contractual rights.

### **DAMAGES**

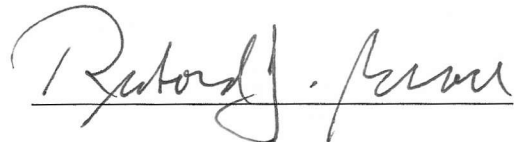
Plaintiffs demand compensatory, consequential, and incidental damages in an amount to be established at trial including attorney fees and costs.

In addition, Plaintiffs seek injunctive relief by separate motion.

Respectfully submitted,

Date:

August 6, 2012



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**CERTIFICATE OF SERVICE**

I, Richard J. Gerace, certify that on this date, I have served the **Complaint** and the **Motion for Temporary Restraining Order and Preliminary Injunction** in this matter on the following as indicated:

FINRA Dispute Resolution  
One Liberty Plaza  
165 Broadway, 27th Floor  
New York, NY 10006  
By email to: bola.aguda@finra.org  
BY USPS EXPRESS MAIL

Bola Aguda  
FINRA Dispute resolution  
One Liberty Plaza  
165 Broadway, 27th Floor  
New York, NY 10006  
By email to: neprocessingcenter@finra.org

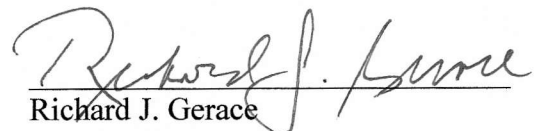
CGMI  
c/o Evelyn Bukchin,  
George Sullivan  
Joan LaRusso  
Greenberg Traurig, LLP  
445 Hamilton Avenue  
White Plains, NY 10601  
By fax to: (212) 805-9424  
By email to: BukchinE@gtlaw.com  
LaRussoJ@gtlaw.com;  
sullivang@gtlaw.com  
By USPS EXPRESS MAIL

**And to following FINRA Officials by email:**

Julie Crotty (Julie.Crotty@finra.org  
Mignon McLemore, Esq.  
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**Arbitrator Doris J. Dombrowski**  
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Respectfully submitted,

Date: August 6, 2012

  
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**VERIFICATION**

Pursuant to 28 U.S.C § 1746, I, Kenneth B. Goldman, on behalf of myself and my wife Judith Goldman, hereby declare under penalty of perjury that I have read the foregoing Complaint and Motion for Temporary Restraining Order and Preliminary Injunction and believe all statements that I have made in the document and statements made on my behalf are in fact my statements and that the statements are accurate and truthful statements and constitute an affidavit in support of the Motion for Temporary Restraining Order and Preliminary Injunction.

Dated: August 6, 2012

Respectfully submitted,  
s/sKenneth B. Goldman

*original to follow*