

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Claimant Jay Mark Miller v. Respondent CIBC World Markets Corp., D/B/A/ CIBC
Oppenheimer Capital, and Oppenheimer Capital

Case Number: 01-02040

Hearing Site: Houston, Texas

REPRESENTATION OF PARTIES

Claimant Jay Mark Miller hereinafter referred to as "Claimant," was represented by Geraldo Garcia, Esq. of Schwartz, Junell, and Campbell & Oathout LLP, of Houston, Texas.

CIBC World Markets Corp., D/B/A/ CIBC Oppenheimer Capital, hereinafter referred to as "CIBC." Was represented by Stephen H. Lee, Esq., of Dole, Restrepo, Harvin & Robbins LLP, of Houston Texas.

Oppenheimer Capital, hereinafter referred to as "Oppenheimer", was represented by David Sterling Esq., of Baker Botts LLP, of Houston, Texas.

CASE INFORMATION

Claimant filed a Statement of Claim on or about: April 25, 2001.

Claimant signed the Uniform Submission Agreement on April 25, 2001

Respondent CIBC filed a Statement of Answer on or about: July 6, 2001.

Respondent CIBC did not file a Uniform Submission Agreement.

Respondent Oppenheimer filed a Statement of Answer on June 28, 2001.

Respondent Oppenheimer signed a Uniform Submission Agreement on June 28, 2001

CASE SUMMARY

Claimant asserted the following causes of actions: non- payment of commissions by Oppenheimer after Claimant resigned as a stock broker from Oppenheimer; breach of oral agreements by CIBC and Oppenheimer to pay claimant commissions based upon his role in bringing to Oppenheimer an account for the management of a pension fund; failure of

respondents to provide Claimant with an accounting of management fees collected on the pension fund; failure of Oppenheimer to cover reasonable attorneys fees and expenses when Claimant was made a party to a lawsuit after his retirement, hereinafter referred to as the "WRT" litigation.

Unless specifically admitted in its Answer, Respondent CIBC denied the allegations in the Statement of Claim and set forth the following affirmative defenses:

1. The Statement of Claim fails to state any cause of action against CIBC for which relief may be granted;
2. The damages alleged by Claimant were not caused by the acts attributable to CIBC;
3. CIBC made no oral agreements with Claimant and Claimant is barred by the parol evidence rule and the statutes of limitations and/or by the doctrine of laches;
4. Claimant's claims are barred by the principles of waiver, estoppel, quasi-estoppel and ratification;
5. Claimant is barred from recovery in whole or in part by the doctrines of in pari delicto and unclean hands;
6. Any recovery by Claimant would constitute an unjust enrichment and therefore Claimant's claims are barred;
7. CIBC specially denies that Claimant is entitled to attorneys' fees;
8. CIBC is entitled to an offset for any sums paid by it to defend Miller in the WRT litigation.

Unless specifically admitted in its Answer, Respondent Oppenheimer denied the allegations in the Statement of Claim and set forth the following affirmative defenses:

1. Claimant did play a role in bringing to Oppenheimer an account for the management of Pension funds, however no oral agreements were made to provide special commissions to Claimant;
2. All written evidence contradicts Claimants allegation that he was entitled to receive commissions after he resigned his position with Oppenheimer;
3. Industry practice and common sense dictate that Miller's Claim should be rejected.

OTHER ISSUES CONSIDERED AND DECIDED

At the time of the hearing Respondent Oppenheimer moved for a dismissal of all claims. Claimant opposed the motion to dismiss. The Panel denied Respondent's motion.

Respondent CIBC World Markets Corp., D/B/A/ CIBC Oppenheimer Capital, did not file with NASD Dispute Resolution, Inc. a properly executed submission to arbitration but is required to submit to arbitration pursuant to the Code and, having answered the claim, appeared and testified at the hearing, is bound by the determination of the Panel on all issues submitted.

CIBC World Markets Corp., D/B/A/ CIBC Oppenheimer Capital entered into a settlement agreement with Claimant J. Mark Miller following the May 7-8, 2002 hearing sessions. Thus, CIBC World Markets Corp., D/B/A/ CIBC Oppenheimer Capital did not attend the hearing on May 14, 2002.

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$ 175,131.18
Punitive damages	\$ Unspecified
Interest	\$ Unspecified
Attorneys' Fees	\$ Unspecified
Other Costs	\$ Unspecified

Respondents requested that the Statement of Claim be dismissed in its entirety.

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. Claimant J Mark Miller's claims against Oppeneheimer Capital are dismissed in their entirety, with prejudice;
2. Claimant Jay Mark Miller shall pay to Respondents Oppenheimer Capital Costs incurred by Respondent in preparing for this hearing in the amount of (\$3,000.00) three thousand dollars, representing the costs incurred by the Respondent to prepare for this hearing;
3. Except as otherwise specified herein, each party shall bear their own costs;
4. Any and all relief not specifically addressed herein, is denied;

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution, Inc., will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 300.00
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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 person at the time of the event-giving rise to the dispute. In this matter, the member firm is CIBC World Markets Corp., D/B/A/ CIBC Oppenheimer Capital.

Member surcharge	= \$ 1, 500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 2,500.00

Forum Fees and Assessments

The Panel has the authority to assess 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 session with a single arbitrator x 450.00	= \$ 900.00
Pre-hearing conferences: October 1, 2001 1 session	
March 12, 2002 1 session	
Two (2) Pre- hearing sessions x \$1,125.00	= \$ 2,250.00
Pre-hearing conferences: October 1, 2001 1 session	
May 2, 2002 1 session	
Five (5) Hearing sessions x \$1.125.00	= \$ 5,625.00
May 7, 2002 2 session	
May 8, 2002 2 sessions	
May 14, 2002 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 8,775.00

The Panel has assessed \$8,775.00 in forum fees against Claimant Jay Mark Miller.

FEE SUMMARY

Claimants is solely liable liable for:

Filing Fee	= \$ 300.00
<u>Forum Fees</u>	<u>= \$ 8,775.00</u>
<u>Total Fees</u>	<u>= \$ 9,075.00</u>
<u>Less payments</u>	<u>= \$ 1,425.00</u>
Balance Due to NASD Dispute Resolution, Inc.	= \$ 7,650.00

Respondent CIBC World Markets Corp., D/B/A/ CIBC Oppenheimer Capital
is solely liable for:

Member Fees	= \$ 4,600.00
<u>Forum Fees</u>	<u>= \$ 00</u>

Total Fees	= \$ 4,600.00
<u>Less payments</u>	<u>= \$ 4,600.00</u>
Balance due to NASD Dispute Resolution, Inc.	= \$ 00

ARBITRATION PANEL

Daniel R. Schmieder, Esq.,-Non-Public Arbitrator, Presiding Chair
Robert E. Otto -Non- Public Arbitrator
Dale A. Hearn-Non-Public Arbitrator

Concurring Arbitrators' Signatures

Daniel R. Schmieder, Esq.
Non-Public Arbitrator
Presiding Chair

Signature Date

Robert E. Otto
Public Arbitrator

Signature Date

Dale A. Hearn
Non-Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

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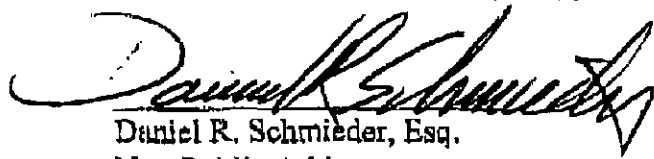
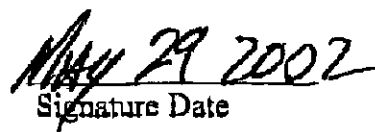
Total Fees	= \$ 4,600.00
Less payments	= \$ 4,600.00
Balance due to NASD Dispute Resolution, Inc.	= \$ 00

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Robert E. Otto - Non-Public Arbitrator

Dale A. Hearn - Non-Public Arbitrator

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Non-Public Arbitrator
Presiding Chair
Signature Date_____
Robert E. Otto
Public Arbitrator_____
Signature Date_____
Dale A. Hearn
Non-Public Arbitrator_____
Signature Date_____
Date of Service (For NASD-Dispute Resolution office use only)

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Total Fees	= \$ 4,600.00
Less payments	= \$ 4,600.00
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Non-Public Arbitrator
Presiding Chair

Signature Date

Robert E. Otto

5/29/02

Robert E. Otto
Non-Public Arbitrator

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Non-Public Arbitrator

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<u>Less payments</u>	<u>= \$ 4,600.00</u>
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