

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Bruce Whitman (Claimant) vs. CIBC World Markets Corporation; Rolf W. Brunner and Ivan O. Alfaro (Respondents)

Case Number: 02-05718

Hearing Site: New York, New York

Nature of the Dispute: Customer vs. Member and Associated Persons.

REPRESENTATION OF PARTIES

Claimant Bruce Whitman hereinafter referred to as ("Claimant"): Steven A. Berger, Esq. and Kenneth J. Applebaum, Esq., Berger & Webb, LLP, New York, NY.

Respondents CIBC World Markets Corporation ("CIBC") and Ivan O. Alfaro ("Alfaro"): John R. Duff, Esq. and Hector Gonzalez, Esq., previously represented by Steven Wolowitz, Esq., Mayer, Brown, Rowe & Maw LLP, New York, NY.

Respondent Rolf W. Brunner ("Brunner"): Phillip R. Hoffman, Esq., Pryor Cashman Sherman & Flynn LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: September 25, 2002.

Amended Statement of Claim filed on or about: February 18, 2003.

Claimant's Memorandum of Law in Opposition to Respondents' Motion to Dismiss filed on or about: February 27, 2003.

Claimant signed the Uniform Submission Agreement: September 23, 2002.

Statement of Answer and Motion to Dismiss filed by Respondents CIBC and Alfaro on or about: December 5, 2002.

CIBC and Alfaro's Reply to Claimant's Opposition to Motion to Dismiss and Answer to the Amended Statement of Claim filed on or about: April 22, 2003.

Respondent CIBC signed the Uniform Submission Agreement: December 5, 2002.

Respondent Alfaro signed the Uniform Submission Agreement: December 5, 2002.

Statement of Answer and Motion to Dismiss filed by Respondent Brunner on or about: December 6, 2002.

Respondent Brunner's Reply to Claimant's Opposition to Respondent's Motion to Dismiss and Answer to Amended Statement of Claim filed on or about: April 22, 2003.

Respondent Brunner signed the Uniform Submission Agreement: December 3, 2002.

CASE SUMMARY

Claimant asserted the following causes of action: violation of section 10(b) of the Securities and Exchange Act 1934 and Rule 10b-5; negligence; breach of fiduciary duty; misrepresentations/non-disclosures; unauthorized trading; failure to supervise; omission of facts; unsuitability; errors/charges and churning. The causes of action relate to the common stock of Berkshire Hathaway Inc.

Unless specifically admitted in their respective Answers, Respondents CIBC, Alfaro and Brunner denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In both the Statement of Claim and the Amended Statement of Claim, Claimant requested that an award be made against the Respondents CIBC, Alfaro and Brunner as follows:

1. On his first claim, awarding him an amount to be determined, but in no event less than \$5,000,000.00 together with interest, costs and attorneys' fees;
2. On his second claim, awarding him an amount to be determined, but in no event less than \$5,000,000.00, plus punitive damages in the amount of \$5,000,000.00, interest, costs and attorneys' fees;
3. On his third claim, awarding him an amount to be determined, but in no event less than \$5,000,000.00, plus punitive damages in the amount of \$5,000,000.00, interest, costs and attorneys' fees;
4. On his fourth claim, awarding him an amount to be determined, but in no event less than \$5,000,000.00, together with interest, costs and attorneys' fees;
5. On his fifth claim, awarding him an amount to be determined, but in no event less than \$5,000,000.00 together with interest, costs and attorneys' fees;
6. On his sixth claim, awarding him an amount to be determined, but in no event less than \$5,000,000.00, together with interest, costs and attorneys' fees;
7. On his seventh claim, awarding him an amount to be determined, but in no event less than \$1,000,000.00, together with interest, costs and attorneys' fees;
8. On his eighth claim, awarding him an amount to be determined, but in no event less than \$5,000,000.00, together with interest, costs and attorneys' fees;
9. And such other and further relief as the Panel deems just and proper.

Respondents CIBC and Alfaro requested that Claimant's Statement of Claim be dismissed in its entirety.

Respondent Brunner requested that the Amended Statement of Claim and every claim therein be dismissed in their entirety and that he be awarded such other and further relief as the Panel may deem just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

At the hearing in this matter, Respondents filed a Motion to Dismiss. The Panel denied the Motion.

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 hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimant's claims are denied in their entirety.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Ivan O. Alfaro's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notices to Members 99-09 and 99-54, Respondent Alfaro must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.
3. 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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 600.00
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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 persons at the time of the events giving rise to the dispute. Accordingly, Respondent CIBC is a member party.

Member surcharge	= \$ 3,750.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	= \$ 5,500.00
Total Member fees	= \$ 10,000.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Six (6) Pre-hearing sessions with the Panel @ \$1,200.00 per session	= \$ 7,200.00
Pre-hearing conferences:	
October 1, 2003	1 session
October 29, 2003	1 session
March 29, 2004	1 session
September 7, 2004	1 session
May 2, 2005	1 session
June 2, 2005	1 session

Forty-Two (42) Hearing sessions @ \$1,200.00 per session = \$ 50,400.00

Hearing Dates:	May 3, 2004	2 sessions
	May 4, 2004	2 sessions
	May 5, 2004	2 sessions
	May 6, 2004	2 sessions
	July 26, 2004	2 sessions
	August 12, 2004	2 sessions
	August 13, 2004	2 sessions
	October 18, 2004	2 sessions
	January 5, 2005	2 sessions
	January 6, 2005	2 sessions
	January 7, 2005	2 sessions
	January 10, 2005	2 sessions
	January 14, 2005	2 sessions
	March 21, 2005	2 sessions
	March 22, 2005	2 sessions
	March 28, 2005	2 sessions
	June 29, 2005	2 sessions
	June 30, 2005	2 sessions
	August 17, 2005	2 sessions
	August 18, 2005	2 sessions
	October 11, 2005	2 sessions

Total Forum Fees = \$ 57,600.00

1. The Panel has assessed \$57,600.00 of the forum fees to CIBC World Markets Corporation.

Fee Summary

1. Claimant Bruce Whitman is solely liable for:

<u>Initial Filing Fee</u>	= \$ 600.00
<u>Total Fees</u>	= \$ 600.00
<u>Less payments</u>	= \$ 1,800.00
<u>Refund Due Claimant</u>	= \$ 1,200.00

2. Respondent CIBC World Markets Corporation is solely liable for:

<u>Member Fees</u>	= \$10,000.00
<u>Forum Fees</u>	= \$57,600.00
<u>Total Fees</u>	= \$67,600.00
<u>Less payments</u>	= \$10,000.00
<u>Balance Due NASD Dispute Resolution</u>	= \$57,600.00

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

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NASD REGULATION

007/007


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ARBITRATION PANEL

Irwin Kahn, Esq.,	-	Public Arbitrator, Presiding Chairperson
Eric P. Nachman, Esq.,	-	Public Arbitrator
Harry D. Frisch, Esq.,	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.



Irwin Kahn, Esq.
Public Arbitrator, Presiding Chairperson

10/20/05

Signature Date

Eric P. Nachman, Esq.
Public Arbitrator

Signature Date

Harry D. Frisch, Esq.
Non-Public Arbitrator

Signature Date

October 21, 2005

Date of Service (For NASD Dispute Resolution use only)

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Public Arbitrator, Presiding Chairperson

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Eric P. Nachman, Esq.
Public Arbitrator

Signature Date



Harry D. Frisch, Esq.
Non-Public Arbitrator

10/21/2005
Signature Date

October 21, 2005
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