

**Stipulated Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Joan Conway, individually, and as Trustee for the Thomas A. Conway Trust u/t/d 3/11/98 (Claimants) v. CIBC Oppenheimer n/k/a Oppenheimer & Co. division of Fahnestock, Fahnestock & Co., Inc., CIBC World Markets Corp., Arthur Gerard Caione, and Arthur Alexander Caione (Respondents)

Case Number: 03-00579

Hearing Site: New York, New York

---

Nature of the Dispute: Customers v. Members and Associated Persons.

**REPRESENTATION OF PARTIES**

Claimants Joan Conway ("Conway") and Joan Conway as Trustee for the Thomas A. Conway Trust ("Conway Trust") hereinafter collectively referred to as "Claimants": Mark A. Berman, Esq., Ganfer & Shore, LLP, New York, NY.

Respondents CIBC World Markets Corp. ("CIBC"), Arthur Gerard Caione ("A.G. Caione"), and Arthur Alexander Caione ("A.A. Caione"): Scott D. Musoff, Esq., Skadden, Arps, Slate, Meagher & Flom, LLP, New York, NY.

Respondents CIBC Oppenheimer n/k/a Oppenheimer & Co. ("CIBC Oppenheimer") and Fahnestock & Co., Inc. ("Fahnestock") did not enter appearances in this matter.

CIBC, A.G. Caione, A.A. Caione, CIBC Oppenheimer, and Fahnestock are hereinafter collectively referred to as "Respondents".

**CASE INFORMATION**

Statement of Claim filed on or about: January 27, 2003.

Claimants signed the Uniform Submission Agreement: January 26, 2003.

Joint Statement of Answer filed by Respondents CIBC, A.G. Caione, and A.A. Caione on or about: May 8, 2003.

Respondent CIBC signed the Uniform Submission Agreement on or about May 29, 2003.

Respondent A.G. Caione signed the Uniform Submission Agreement on or about June 3, 2003.

Respondent A.A. Caione signed the Uniform Submission Agreement on or about May 28, 2003.

Respondents CIBC Oppenheimer and Fahnestock did not file Statements of Answer or sign Uniform Submission Agreements.

### **CASE SUMMARY**

Claimants asserted the following causes of action: federal securities fraud; common law fraud; breach of fiduciary duty; breach of the duties of good faith, fair dealing and candor; breach of contract; negligence; negligent misrepresentation and omission; breach of NASD Conduct Rules 2110, 2310 and 3010; failure to supervise and control person liability. The causes of action relate to unspecified equity securities.

Unless specifically admitted in their Answer, Respondents CIBC, A.G. Caione, and A. A. Caione denied the allegations of wrongdoing set forth in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of \$33,000,000.00, plus interest; punitive damages; costs and disbursements, including reasonable attorneys' fees, as may be allowed by law; and such other and further relief as the Panel deems just and proper.

Respondents CIBC, A.G. Caione, and A.A. Caione requested that the Statement of Claim be dismissed in its entirety, and that Respondents be awarded such other and further relief as the Panel deems just and proper, including their costs, expenses, forum fees, and attorneys' fees.

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

On or about May 1, 2003, a stipulation was submitted to NASD Dispute Resolution that the Claimants were withdrawing their claims, without prejudice, against Respondents CIBC Oppenheimer and Fahnstock.

On or about May 17, 2004, Claimants notified NASD Dispute Resolution that they settled their claims with Respondents through mediation and are requesting the entry of a Stipulated Award.

The parties agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered.

At the pre-hearing conference on October 7, 2004, the parties and Panel agreed that CIBC would solely pay any additional fees associated with this matter.

### **AWARD**

The parties entered into an agreement to present to the Panel a Stipulated Award. Now, in lieu of a hearing and upon motion of both parties for an entry of an award, the written stipulation thereto, the Panel grants the motion and enters this award granting the following relief:

1. All claims in the Arbitration are dismissed with prejudice.
2. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Arthur Gerard Caione'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 Arthur Gerard Caione must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
3. The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent Arthur Alexander Caione'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 Arthur Alexander Caione must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.
4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

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	= \$600.00
--------------------------	------------

#### **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. In this matter, CIBC World Markets Corp. is a party.

Member Surcharge	= \$ 3,750.00
Pre-Hearing Process Fee	= \$ 750.00
<u>Hearing Process Fee</u>	<u>= \$ 5,500.00</u>

Total Member Fees = \$10,000.00

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. In this matter, Fahnestock & Co., Inc. is a party.

Member Surcharge = \$ 3,750.00  
Total Member Fees = \$ 3,750.00

### **Adjournment Fees**

The following adjournment fees are assessed:

April 20-22, 2004 and April 27-29, 2004, joint adjournment request	= \$1,200.00
Claimants' share	= \$600.00
Respondents CIBC's share,	= \$600.00
 June 2-4, 2004, joint adjournment request	 = \$1,500.00
Claimants' share	= \$750.00
Respondents CIBC's share,	= \$750.00

### **Forum Fees and Assessments**

The Panel assesses forum fees for each hearing session conducted. A hearing 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. Forum fees associated with these proceedings are:

Eight (8) Pre-hearing conference session with the Panel @ \$1,200.00/session	= \$9,600.00
Pre-hearing conferences:	
September 10, 2003	1 session
November 13, 2003	1 session
November 21, 2003	2 sessions
December 17, 2003	1 session
December 18, 2003	2 sessions
October 7, 2004	1 session
<hr/> Total Forum Fees	<hr/> = \$9,600.00

1. The parties have agreed that CIBC shall solely pay the forum fees.

### **Fee Summary**

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Adjournment Fees	= \$ 1,350.00

Forum Fees	= \$ 225.00
Total Fees	= \$ 2,175.00
<u>Less payments</u>	<u>= \$ 2,175.00</u>
Balance Due NASD	= \$ 0.00

2. Respondent Fahnestock is solely liable for:

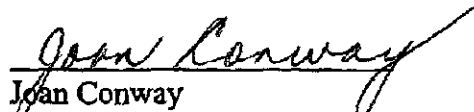
Member Fees	= \$ 3,750.00
Total Fees	= \$ 3,750.00
<u>Less payments</u>	<u>= \$ 3,750.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

3. Respondent CIBC is solely liable for:

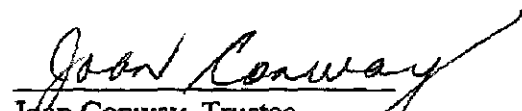
Member Fees	= \$10,000.00
Adjournment fee	= \$ 1,350.00
Forum Fees	= \$ 9,600.00
Total Fees	= \$20,950.00
<u>Less payments</u>	<u>= \$10,425.00</u>
Balance Due NASD Dispute Resolution	= \$10,525.00

All balances are due and payable to NASD Dispute Resolution

Parties' Signatures

  
Joan Conway  
Claimant

10/21/04  
Signature Date

  
Joan Conway, Trustee  
Thomas A. Conway Trust w/d 3/11/98  
Claimant

10/21/04  
Signature Date

\_\_\_\_\_  
CIBC World Markets Corp.  
Respondent

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

\_\_\_\_\_  
Arthur G. Caione  
Respondent

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

\_\_\_\_\_  
Arthur A. Caione  
Respondent

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

**Parties' Signatures**

---

Joan Conway  
Claimant

---


Signature Date

---

Joan Conway, Trustee  
Thomas A. Conway Trust u/t/d 3/11/98  
Claimant

---

Signature Date



---

CIBC World Markets Corp.  
Respondent

10/27/07

---

Signature Date

---

Arthur G. Caione  
Respondent

---

Signature Date

---

Arthur A. Caione  
Respondent

---

Signature Date

Parties' Signatures

---

Joan Conway  
Claimant

---

Signature Date

---

Joan Conway, Trustee  
Thomas A. Conway Trust u/t/d 3/11/98  
Claimant

---

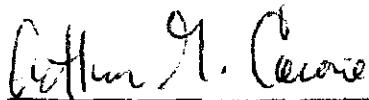
Signature Date

---

CIBC World Markets Corp.  
Respondent

---

Signature Date



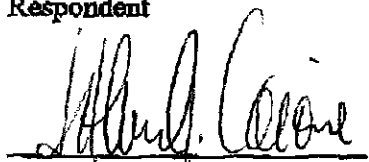
---

Arthur G. Caione  
Respondent

10/20/04

---

Signature Date



---

Arthur A. Caione  
Respondent

10/20/04

---


Signature Date



**ARBITRATION PANEL**

Richard Weinberger, Esq.	-	Public Arbitrator, Presiding Chair
John E. Rothschild	-	Public Arbitrator
Salvatore Saladini	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

  
Richard Weinberger, Esq.  
Public Arbitrator, Presiding Chair

Nov. 11, 2004  
Signature Date

\_\_\_\_\_  
John E. Rothschild  
Public Arbitrator

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

\_\_\_\_\_  
Salvatore Saladini  
Industry Arbitrator

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

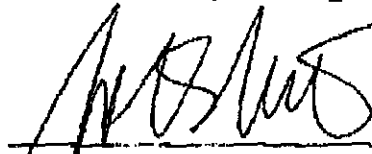
\_\_\_\_\_  
Date of Service (For NASD office use only)

**ARBITRATION PANEL**

Richard Weinberger, Esq.	-	Public Arbitrator, Presiding Chair
John E. Rothschild	-	Public Arbitrator
Salvatore Saladini	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

Richard Weinberger, Esq.  
Public Arbitrator, Presiding Chair

  
John E. Rothschild  
Public Arbitrator

Signature Date

November 12, 2004  
Signature Date

Salvatore Saladini  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

ARBITRATION PANEL

Richard Weinberger, Esq.	-	Public Arbitrator, Presiding Chair
John E. Rothschild	-	Public Arbitrator
Salvatore Saladini	-	Non-Public Arbitrator

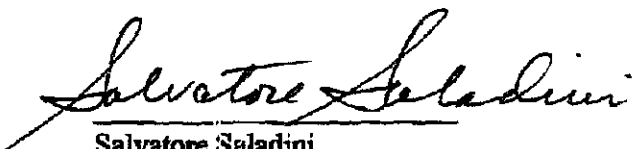
Concurring Arbitrators' Signatures

\_\_\_\_\_  
Richard Weinberger, Esq.  
Public Arbitrator, Presiding Chair

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

\_\_\_\_\_  
John E. Rothschild  
Public Arbitrator

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

  
\_\_\_\_\_  
Salvatore Saladini  
Industry Arbitrator

11/11/04  
Signature Date

\_\_\_\_\_  
Date of Service (For NASD office use only)