

Modified Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Oppenheimer & Co., A Division of Fahnestock & Co., Inc. (Claimant) vs. David E. Cundey vs.
(Respondent) CIBC World Markets, Corporation (Third-Party Respondent)

Case Number: 03-03732

Hearing Site: New York, New York

Nature of the Dispute: Initial Claim: Member vs. Associated Person
 Third-Party Claim: Associated Person vs. Member

REPRESENTATION OF PARTIES

Claimant Oppenheimer & Co., A Division of Fahnestock & Co., Inc., hereinafter referred to as "Claimant": Theodore R. Snyder, Esq., Krebsbach & Snyder, New York, NY. Previously represented by Eric J. Shames, Esq., Oppenheimer & Co.

Respondent David E. Cundey hereinafter referred to as "Respondent": David Marek, Esq., Liddle & Robinson, L.L.P., New York, NY.

Third-Party Respondent CIBC World Markets Corporation hereinafter referred to as "Third Party Respondent": Joseph J. Sullivan, III, Esq., Sheindlin & Sullivan, LLP, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: May 20, 2003.

Claimant signed the Uniform Submission Agreement: May 20, 2003.

Statement of Answer filed by Respondent on or about: July 16, 2003.

Respondent did not sign the Uniform Submission Agreement.

Statement of Answer filed by Third Party Respondent on or about August 3, 2003.

Third Party Respondent did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of promissory note and indebtedness.

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

In his Third-Party claim, Respondent asserted the following causes of action: breach of covenant of good faith and fair dealing, fraudulent inducement to accept offer of employment, misrepresentations, negligent misrepresentation and concealment.

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$381,457.86; interest at the rate of 9% per annum from February 20, 2003 until judgment; loss of commission revenue; filing fees in the amount of \$3,825.00; attorneys' fees; and costs.

Respondent requested dismissal of the Claimant's claims in its entirety. In the event that the Panel does not dismiss Claimant's claim, Respondent requested a reduction of Claimant's compensatory damages from \$381,457.86 to \$263,589.00, the amount admitted by Respondent as outstanding.

In his Third Party Claim, Respondent requested compensatory damages in the amount of \$500,000.00; interest at the rate of 9%; forgiveness of his promissory note; attorneys' fees; costs; and such other relief the Panel deems appropriate.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement 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.

Third Party Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement 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.

During the hearing, the Claimant amended its Statement of Claim by dropping Claim C at page 5 of the Statement of Claim to wit: "Damages sustained as a result of lost commission revenue resulting from Cundey's breach of Paragraph Nos. 5 and 6 of the Note.

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. Respondent is liable for and shall pay to Claimant compensatory damages in the amount of \$275,714.00, plus interest at the rate of 6% per annum from February 20, 2003 until December 14, 2005.
2. Respondent's Third-Party Claims are denied in its entirety.

3. Third Party Respondent shall provide to the Respondent official notice that all rights under the Note Agreement (dated July, 2002) have been transferred to the Claimant.
4. Each party shall bear its own costs, including attorneys' fees.
5. 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	= \$ 1,000.00
Third Party Claim filing fee	= \$ 300.00

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated persons at the time of the events giving rise to the dispute. Accordingly, Oppenheimer & Co. and CIBC World Markets, Corp., are parties.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 2,750.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted or each decision rendered on a discovery-related motion on the papers. 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:

One (1) Pre-hearing session with Panel @ \$1,125.00/session	= \$ 1,125.00
Pre-hearing conference: January 29, 2004 1 session	

Seven (7) Hearing sessions @ \$1,125.00/session	= \$ 7,875.00
Hearing Dates: December 12, 2005 2 sessions	
December 13, 2005 2 sessions	
December 14, 2005 2 sessions	
January 6, 2006 1 session	

Total Forum Fees	= \$ 9,000.00
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1. The Panel has assessed \$3,000.00 of the forum fees to Claimant Oppenheimer & Co.
2. The Panel has assessed \$3,000.00 of the forum fees to Respondent Cundey.
3. The Panel has assessed \$3,000.00 of the forum fees to Third Party Respondent CIBC World Markets.

Fee Summary

1. Claimant Oppenheimer & Co., is solely liable for:
Initial Filing Fee = \$ 1,000.00

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 3,000.00
Total Fees	= \$ 9,200.00
<u>Less payments</u>	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$ 1,875.00

2. Respondent Cundey is solely liable for:

Third Party Claim Filing Fees	= \$ 300.00
<u>Forum Fees</u>	= \$ 3,000.00
Total Fees	= \$ 3,300.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 3,300.00

3. Third Party Respondent CIBC World Markets is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 3,000.00
Total Fees	= \$ 8,200.00
<u>Less payments</u>	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 8,200.00

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

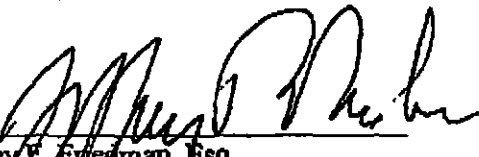
NASD Dispute Resolution
Arbitration No. 03-03732
Award Page 5 of 5

ARBITRATION PANEL

Jeffrey F. Friedman, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Linda S. Cole	-	Non-Public Arbitrator
Joseph M. Buffone, 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.



Jeffrey F. Friedman, Esq.
Non-Public Arbitrator, Presiding Chairperson

3/8/06

Signature Date

Linda S. Cole
Non-Public Arbitrator

Signature Date

Joseph M. Buffone, Esq.
Non-Public Arbitrator

Signature Date

March 22, 2006

Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL


Jeffrey F. Friedman, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Linda S. Cole	-	Non-Public Arbitrator
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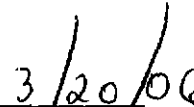
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Non-Public Arbitrator, Presiding Chairperson

Signature Date



Linda S. Cole
Non-Public Arbitrator



Signature Date

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