
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant
Richard E. Berkowitz

Case Number: 03-06457

Name of the Respondent
CIBC World Markets Corporation

Hearing Site: Atlanta, Georgia

Nature of the Dispute: Associated Person vs. Member.

REPRESENTATION OF PARTIES

For Richard E. Berkowitz, hereinafter referred to as "Claimant": Frank S. James, III, Esq., Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C., Birmingham, Alabama.

For CIBC World Markets Corporation, hereinafter referred to as "Respondent": Elizabeth Rose Aylett, Esq., CIBC World Markets Corporation, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: September 8, 2003.
Claimant signed the Uniform Submission Agreement: September 29, 2003.
Statement of Answer filed by Respondent on or about: December 19, 2003.
Respondent signed the Uniform Submission Agreement: December 19, 2003.

CASE SUMMARY

Claimant asserted the cause of action of breach of contract in connection with the agreement entered into by the parties (the "Agreement") with respect to Claimant's transfer from Respondent's Institutional Department to Respondent's Private Client Division.

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

RELIEF REQUESTED

Claimant requested the following relief:

- (1) an accounting of all commissions paid to Respondent on the Peachtree Asset account for the period beginning on March 1, 1999 through December 31, 2002, and payment of any amounts required by Paragraph 2 of the Agreement;

- (2) an accounting of all commissions paid to Respondent on the Wedge Capital Management account and the GMT Capital account for the period beginning on the transfer date of these accounts through December 31, 2002, and payment of any amounts required by Paragraphs 2 and 6 of the Agreement;
- (3) \$62,500.00 to compensate Claimant for the loss of commission income due to Respondent's failure to provide a replacement for the ING account for the period beginning on March 1, 2002 through December 31, 2002, as required by the Agreement; and,
- (4) interest, costs, and such further and different relief to which Claimant may be entitled.

Respondent requested that Claimant's allegations be denied.

OTHER ISSUES CONSIDERED AND DECIDED

At the commencement of the evidentiary hearing, the parties accepted the composition of the arbitration panel and acknowledged the May 11, 2004 letter from NASD Dispute Resolution stating that the arbitration panel was not constituted in compliance with Rule 10202 of the NASD Code of Arbitration Procedure (the "Code").

At the commencement of the evidentiary hearing, Claimant dismissed the request for relief contained in (1), Relief Requested (see above).

The parties 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, and the post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent is liable and shall pay to Claimant the sum of \$10,447.88, interest specifically denied.

Respondent is liable and shall pay to Claimant the sum of \$225.00 representing reimbursement of the claim filing fee previously paid by Claimant to NASD Dispute Resolution.

Any and all claims for relief not specifically addressed herein are 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	= \$ 225.00
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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(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Member Surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$1,700.00</u>
Total Member Fees	= \$3,550.00

Adjournment Fees

No adjournments were requested in this matter.

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session.

Three-day cancellation fees were not assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: May 11, 2004 1 session	
Two (2) Hearing sessions @ \$750.00/session	= \$1,500.00
Hearing Dates: October 5, 2004 2 sessions	
<u>Total Forum Fees</u>	<u>= \$2,250.00</u>

The Panel has assessed the total forum fees of \$2,250.00 to Respondent.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimant is solely liable for:

Initial Filing Fee	= \$225.00
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Total Fees	= \$225.00
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Less payments	= \$225.00
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Balance Due NASD Dispute Resolution	= \$0.00
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Respondent is solely liable for:

Member Fees	= \$3,550.00
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Forum Fees	= \$2,250.00
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Total Fees	= \$5,800.00
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Less payments	= \$3,550.00
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Balance Due NASD Dispute Resolution	= \$2,250.00
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All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Frank W. Virgin, Esq.	-	Public Arbitrator, Presiding Chairperson
James C. Hoover, Esq.	-	Public Arbitrator
Carrie E. Wisniewski	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/S/
Frank W. Virgin, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

NASD Dispute Resolution

Arbitration No. 03-06457

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/S/

James C. Hoover, Esq.
Public Arbitrator

Signature Date

/S/

Carrie E. Wisniewski
Non-Public Arbitrator

Signature Date

October 8, 2004

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

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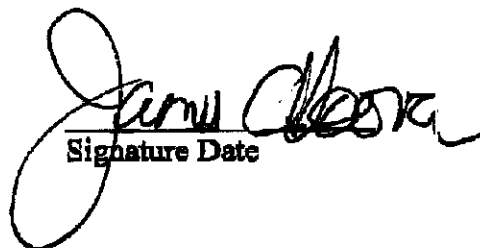


Frank W. Virgin, Esq.
Public Arbitrator, Presiding Chairperson

10/7/04
Signature Date

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James C. Hoover, Esq.
Public Arbitrator



Signature Date

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