

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

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In the Matter of the Arbitration Between:

Bernice A. Cohen (Claimant) vs. Steven Auerfeld, Oppenheimer & Co., Inc. and CIBC World Markets Corp. (Respondents)

Case Number: 05-01471

Hearing Site: New York, New York

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Nature of the Dispute: Customer vs. Associated Person and Members

**REPRESENTATION OF PARTIES**

Claimant Bernice A. Cohen hereinafter referred to as "Claimant": Stuart S. Schachter, Esq., New York, NY.

Respondent Oppenheimer & Co., Inc. hereinafter referred to as "Oppenheimer": Yosef Sinensky, Esq., Oppenheimer & Co., Inc., New York, NY.

Respondents Steven Auerfeld ("Auerfeld") and CIBC World Markets Corp. ("CIBC") hereinafter collectively referred to as "Respondents": Elizabeth Rose Aylett, Esq., CIBC World Markets Corp., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 17, 2005.

Claimant signed the Uniform Submission Agreement: March 16, 2005.

Auerfeld and Oppenheimer's Joint Motion to Dismiss and Statement of Answer filed on or about: May 11, 2005.

Auerfeld did not submit a Uniform Submission Agreement.

Oppenheimer signed the Uniform Submission Agreement: March 29, 2005.

CIBC and Auerfeld's Joint Motion to Dismiss and Statement of Answer filed on or about: May 6, 2005.

CIBC signed the Uniform Submission Agreement: May 17, 2005.

Auerfeld did not submit a Uniform Submission Agreement.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of fiduciary duty, negligence, unauthorized trading, misrepresentations, errors/charges, execution price and dividends. The causes of actions relate to common stock, municipal bonds and mutual funds.

Unless specifically admitted in their Answer, Respondents Auerfeld and Oppenheimer denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in their Answer, Respondents CIBC and Auerfeld denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$15,000.00, punitive damages in the amount of \$15,000.00, costs and fees.

Respondents Auerfeld and Oppenheimer requested dismissal of the Statement of Claim with prejudice, attorneys' fees and disbursements and such other relief as the Panel deems just and proper.

Respondents CIBC and Auerfeld requested dismissal of the Statement of Claim in its entirety and expungement of Auerfeld's CRD record.

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

Respondent Steven Auerfeld 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 Arbitrator on all issues submitted.

At the hearing, CIBC made a Motion to Dismiss Claimant's Statement of Claim. After due deliberation, the Arbitrator denied the Motion.

On or about May 25, 2006, Claimant submitted a Motion to Introduce Additional Evidence. After reviewing all submissions, the Arbitrator denied Claimant's Motion.

The parties have agreed that the Award in this matter may be executed 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, the Arbitrator 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 Arbitrator recommends the expungement of all reference to the above captioned arbitration from Respondent Steven Auerfeld's registration record maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to members 04-16, Respondent Steven Auerfeld must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the Arbitrator has made the following affirmative findings of facts:

The claim, allegation, or information is factually impossible or clearly erroneous.

3. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 150.00
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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. Accordingly, Oppenheimer & Co., Inc. and CIBC World Markets Corp. are parties.

Member surcharge	= \$ 600.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 1,000.00

#### **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:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00/session	= \$ 900.00
Pre-hearing conferences: August 12, 2005	1 session
January 5, 2006	1 session

Three (3) Hearing sessions with Arbitrator @ \$450.00/session	= \$ 1,350.00
Hearing Dates: May 11, 2006	2 sessions
May 12, 2006	1 session

Total Forum Fees	= \$ 2,250.00
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1. The Arbitrator has assessed forum fees in the amount of \$900.00 to Claimant.

2. The Arbitrator has assessed forum fees in the amount of \$450.00 solely to Claimant for the pre-hearing conference held on January 5, 2006.
3. The Arbitrator has assessed forum fees in the amount of \$450.00 to Respondent Oppenheimer.
4. The Arbitrator has assessed forum fees in the amount of \$450.00 to Respondent CIBC.

**Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$ 150.00
Forum Fees	= \$ 1,350.00
<u>Total Fees</u>	<u>= \$ 1,500.00</u>
<u>Less payments</u>	<u>= \$ 600.00</u>
Balance Due NASD Dispute Resolution	= \$ 900.00

2. Respondent Oppenheimer is solely liable for:

Member Fees	= \$ 2,350.00
Forum Fees	= \$ 450.00
<u>Total Fees</u>	<u>= \$ 2,800.00</u>
<u>Less payments</u>	<u>= \$ 2,350.00</u>
Balance Due NASD Dispute Resolution	= \$ 450.00

3. Respondent CIBC is solely liable for:

Member Fees	= \$ 2,350.00
Forum Fees	= \$ 450.00
<u>Total Fees</u>	<u>= \$ 2,800.00</u>
<u>Less payments</u>	<u>= \$ 2,350.00</u>
Balance Due NASD Dispute Resolution	= \$ 450.00

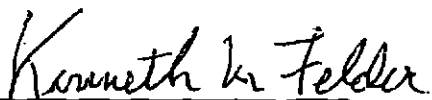
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.


**ARBITRATOR**

Kenneth M. Felder - Sole Public Arbitrator

**Arbitrator's Signature**

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.

  
Kenneth M. Felder  
Sole Public Arbitrator

  
Signature Date

**June 20, 2006**

Date of Service (For NASD Dispute Resolution use only)