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

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In the Matter of the Arbitration Between:

Name of the Claimant  
Larry P. Downey

Case Number: 05-06140

Name of the Respondent  
CIBC World Markets Corp.

Hearing Site: Birmingham, Alabama

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Nature of the Dispute: Customer vs. Member.

**REPRESENTATION OF PARTIES**

For Larry P. Downey , hereinafter referred to as "Claimant": Philip M. Aidikoff, Esq., Robert A. Uhl, Esq. and Ryan K. Bakhtiari, Esq., Aidikoff, Uhl & Bakhtiari, Beverly Hills, California.

For CIBC World Markets Corp., hereinafter referred to as "Respondent": Lloyd S. Clareman, Esq., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: December 1, 2005.  
Claimant signed the Uniform Submission Agreement: November 25, 2005.  
Amended Statement of Claim filed on or about: March 8, 2006.  
Statement of Answer filed by Respondent on or about: March 2, 2006.  
Respondent signed the Uniform Submission Agreement: January 4, 2006.

**CASE SUMMARY**

Claimant asserted the following causes of action: 1) breach of fiduciary duty; 2) fraud; 3) constructive fraud; 4) failure to supervise; 5) breach of contract; 6) violation of federal and state laws; and, 7) violation of Alabama statutory and common law. The causes of action relate to the purchase of unspecified private placement investments sponsored by InterBank Funding Corporation in Claimant's account.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In addition, Respondent contended that the risks of the InterBank investment were disclosed in the Offering Memorandum.

**RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$100,000.00, disgorgement and restitution, lost opportunity costs, pre and post- judgment interest, attorneys' fees, costs, punitive

damages and such other and further relief as the Panel deemed just and proper.

Respondent requested that the Statement of Claim be denied in its entirety and an assessment of all costs against Claimant.

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

On or about December 5, 2006, the parties advised NASD Dispute Resolution that they had settled this matter.

On or about December 8, 2006, the parties advised NASD Dispute Resolution that they would be submitting a proposed Stipulated Award.

On or about December 13, 2006, the parties submitted to NASD Dispute Resolution a proposed Stipulated Award for the purpose of facilitating the assignment of the disputed InterBank investment from Claimant to Respondent.

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

### **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:

The Panel hereby orders that all Claimant's interests in or arising out of the 11% Notes issued by IBF Special Purpose Corporation VII, including specifically those membership interests in IBF Fund Liquidating LLC ("Fund LLC"), described in certain letters sent to Claimant by Investment Company Act Trustee Arthur J. Steinberg, Esq. (the "Trustee") in January 2004 and September 2005, that are owned or held in the name of Larry P. Downey (including all interests jointly owned with his wife), be transferred and assigned in their entirety to CIBC World Markets Corporation; and that the parties and the Trustee execute any further documentation necessary to effectuate such transfer.

The parties shall each bear their respective costs, including attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

### **FEES**

Pursuant to the NASD Code of Arbitration Procedure (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

### **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 events giving rise to the dispute. Accordingly, Respondent is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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

### **Adjournment Fees**

Adjournments granted during these proceedings for which fees were assessed:

No requests for adjournments were filed 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:

No cancellation fees were 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.

No injunctive relief fees were incurred during this proceeding.

### **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:

One (1) Pre-hearing session with the Panel @ \$750.00/session	= \$ 750.00
Pre-hearing conference: April 4, 2006 1 session	
<u>Total Forum Fees</u>	<u>= \$ 750.00</u>

The Panel has assessed \$375.00 of the forum fees to Claimant.  
The Panel has assessed \$375.00 of the forum fees 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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

**Fee Summary**

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 600.00
Less payments	= \$ 600.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$ 3,550.00
Forum Fees	= \$ 375.00
Total Fees	= \$ 3,925.00
Less payments	= \$ 2,775.00
Balance Due NASD Dispute Resolution	= \$ 1,150.00

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

**ARBITRATION PANEL**

Donald J. Aho	-	Public Arbitrator, Presiding Chairperson
Samuel C. Johnson	-	Public Arbitrator
Sandra J. Bakalus	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

\_\_\_\_\_/s/\_\_\_\_\_  
Donald J. Aho  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
12/18/06  
Signature Date

\_\_\_\_\_/s/\_\_\_\_\_  
Samuel C. Johnson  
Public Arbitrator

\_\_\_\_\_  
12/18/06  
Signature Date

/s/  
Sandra J. Bakalus  
Non-Public Arbitrator

12/15/06  
Signature Date

12/19/06  
Date of Service (For NASD Dispute Resolution office use only)

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Public Arbitrator, Presiding Chairperson

12/18/06  
Signature Date

**Samuel C. Johnson**  
**Public Arbitrator**

**Signature Date**

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Public Arbitrator, Presiding Chairperson

Signature Date

  
Samuel C. Johnson  
Public Arbitrator

12-18-06  
Signature Date

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Sandra J. Bakelus  
Non-Public Arbitrator

  
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