

97-2576

**Award**  
**NASD Regulation, Inc.**

---

In the Matter of the Arbitration Between

Name of Claimant

Marilyn R. Athan, Individually and as Trustee  
of the Peter Athan and Marilyn R. Athan  
Revocable Living Trust Agreement

Case No. 98-03865

Names of Respondents

CIBC Oppenheimer Corp.  
Steven M. Gibson

---

**REPRESENTATION OF PARTIES**

For Claimant: Stephen D. Spivey, Esq., Law Offices of Stephen D. Spivey, Ocala, Florida.

For Respondents CIBC Oppenheimer Corp. ("Oppenheimer") and Steven M. Gibson ("Gibson"), hereinafter collectively referred to as "Respondents": Joseph J. Sullivan, III, Esq., Legal Department Director, CIBC Oppenheimer Corp.

**CASE INFORMATION**

Statement of Claim filed: October 19, 1998.

Peter Athan's Uniform Submission Agreement signed: October 13, 1998.

Respondents' Statements of Answer filed: March 2, 1999.

Respondent Oppenheimer's Uniform Submission Agreement signed: February 24, 1999.

Respondent Gibson's Uniform Submission Agreement signed: March 4, 1999.

**CASE SUMMARY**

Claimant alleged the following: Respondents violated the Florida Securities and Investor Protection Act, the Securities Act of 1934 and the Securities Exchange Act of 1933. Further, Claimant asserted claims under Florida and federal common law for fraud, misrepresentation, unsuitability, unauthorized trading, and negligent supervision. When Peter Athan opened an account with the Respondents in 1991, he was a sixty-seven year old retired lumber salesman. Between March 31, 1993, and September 16, 1993, Respondent Gibson

9912016

concentrated over \$54,000.00 of Peter Athan's funds in 12,000 shares of a single issue, Advanced Financial, Inc. ("AFI"). More than 5,000 of the 12,000 shares purchased for Peter Athan's account were without Peter Athan's permission. As a direct and proximate result of these unauthorized trades in an unsuitable investment, coupled with Respondents' material omissions of fact and misrepresentations, as well as Respondent Oppenheimer's failure to properly supervise the activities of Respondent Gibson, Peter Athan was damaged in the amount of \$44,163.00.

Respondents alleged the following: Peter Athan was a multimillionaire businessman with over twenty years of experience in the stock market. Peter Athan discussed AFI with Respondent Gibson, received written materials about AFI, and authorized every purchase and sale. In addition, Peter Athan received confirmations which reflected all purchase and sale prices. Peter Athan was aware of the price fluctuations of AFI, both from his monthly statements and from the confirmations that he received after each purchase or sale. Furthermore, Peter Athan spoke with Respondent Gibson's branch manager, Frank James, eleven months after the allegedly unauthorized purchase of AFI, and did not complain about AFI. Only after AFI began to decline in value did Peter Athan complain to Respondent Gibson which was over a year and a half after the alleged unauthorized purchase of AFI. Further, when Peter Athan allegedly complained about AFI to Respondent Gibson, Peter Athan could have sold AFI at a profit. Instead, Peter Athan retained AFI for five more years, and chose to file an action against Respondents only after AFI became worthless.

#### **RELIEF REQUESTED**

**Claimant requested:**

Compensatory Damages	\$44,163.00
Pre-judgement interest	unspecified
Attorneys' Fees	unspecified
Costs	unspecified

Respondents requested that the Statement of Claim be dismissed in its entirety.

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

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.

On August 11, 1999, the arbitration panel ("Panel") granted Respondents' Motion to Dismiss the claims of Claimant Marilyn Athan, individually, without prejudice.

On or about December 5, 1998, Claimant Peter Athan passed away.

At the commencement of the evidentiary hearing on November 16, 1999, the Panel granted Claimant's Motion to Amend Pleadings to Substitute Party Claimant Peter Athan with Marilyn Athan as Trustee of the Peter Athan and Marilyn Athan Revocable Living Trust

99-2046

Agreement. Further, the Panel granted Claimant's request to present to the arbitration panel the videotape of Peter Athan's testimony along with a written transcript of said testimony.

### **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:

Claimant's Statement of Claim is dismissed in its entirety.

All parties shall bear their respective attorneys' fees and costs.

All other claims for relief not specifically addressed herein are denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$ 120.00

#### **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. In this matter, the member firm CIBC Oppenheimer Corp. is a party.

Member surcharge = \$ 800.00  
Pre-hearing process fee = \$ 600.00  
Hearing process fee = \$1,000.00

#### **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. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel x \$400.00 = \$ 400.00  
Pre-hearing conference date: August 11, 1999 1 session

Four (4) Hearing sessions x \$400.00 = \$1,600.00  
Hearing Dates: November 16, 1999 2 sessions  
November 17, 1999 2 sessions

Total Forum Fees = \$2,000.00

9912310

The Panel has assessed \$1,000.00 of the forum fees to Claimant.  
The Panel has assessed \$500.00 of the forum fees to Respondent Oppenheimer.  
The Panel has assessed \$500.00 of the forum fees to Respondent Gibson.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 120.00
<u>Forum Fees</u>	= \$1,000.00
Total Fees	= \$1,120.00
<u>Less payments</u>	= \$520.00
Balance Due NASD Regulation, Inc.	= \$600.00

Respondent Oppenheimer be and hereby is solely liable for:

Member Fees	= \$2,400.00
<u>Forum Fees</u>	= \$ 500.00
Total Fees	= \$2,900.00
<u>Less payments</u>	= \$2,400.00
Balance Due NASD Regulation, Inc.	= \$ 500.00

Respondent Gibson be and hereby is solely liable for:

<u>Forum Fees</u>	= \$ 500.00	Forum Fees
Total Fees	= \$ 500.00	Total Fees
<u>Less payments</u>	= \$ 0.00	Less payments
Balance Due NASD Regulation, Inc.	= \$ 500.00	Balance Due NASD

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signature(s)**

\_\_\_\_\_  
/s/  
James Cormack  
Public Arbitrator, Chairperson

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

\_\_\_\_\_  
/s/  
Nicholas Pulignano  
Public Arbitrator

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

\_\_\_\_\_  
/s/  
Stephan Savitt  
Industry Arbitrator

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

December 30, 1999

Date of Service (For NASD office use only)



9912046

The Panel has assessed \$1,000.00 of the forum fees to Claimant.  
The Panel has assessed \$500.00 of the forum fees to Respondent Oppenheimer.  
The Panel has assessed \$500.00 of the forum fees to Respondent Gibson.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 120.00
<u>Forum Fees</u>	<u>= \$1,000.00</u>
Total Fees	= \$1,120.00
<u>Less payments</u>	<u>= \$520.00</u>
Balance Due NASD Regulation, Inc.	= \$600.00

Respondent Oppenheimer be and hereby is solely liable for:

Member Fees	= \$2,400.00
<u>Forum Fees</u>	<u>= \$ 500.00</u>
Total Fees	= \$2,900.00
<u>Less payments</u>	<u>= \$2,400.00</u>
Balance Due NASD Regulation, Inc.	= \$ 500.00

Respondent Gibson be and hereby is solely liable for:

<u>Forum Fees</u>	<u>= \$ 500.00</u>
Total Fees	= \$ 500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Regulation, Inc.	= \$ 500.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signature(s)**

James A. Cormack  
James Cormack  
Public Arbitrator, Chairperson

DECEMBER 29, 1999  
Signature Date

Nicholas Pulignano  
Public Arbitrator

Signature Date

Stephan Savitt  
Industry Arbitrator

Signature Date

Date of Service (For NASD office use only)

9912046

The Panel has assessed \$1,000.00 of the forum fees to Claimant.  
The Panel has assessed \$500.00 of the forum fees to Respondent Oppenheimer.  
The Panel has assessed \$500.00 of the forum fees to Respondent Gibson.

Fee Summary

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 120.00
<u>Forum Fees</u>	<u>= \$1,000.00</u>
Total Fees	= \$1,120.00
<u>Less payments</u>	<u>= \$520.00</u>
Balance Due NASD Regulation, Inc.	= \$600.00

Respondent Oppenheimer be and hereby is solely liable for:

Member Fees	= \$2,400.00
<u>Forum Fees</u>	<u>= \$ 500.00</u>
Total Fees	= \$2,900.00
<u>Less payments</u>	<u>= \$2,400.00</u>
Balance Due NASD Regulation, Inc.	= \$ 500.00

Respondent Gibson be and hereby is solely liable for:

<u>Forum Fees</u>	<u>= \$ 500.00</u>
Total Fees	= \$ 500.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Regulation, Inc.	= \$ 500.00

All balances are due and payable to NASD Regulation, Inc.

Concurring Arbitrators' Signature(s)

James Cormack  
Public Arbitrator, Chairperson

  
Nicholas Pulignano  
Public Arbitrator

Stephan Savitt  
Industry Arbitrator

Signature Date

12-29-99  
Signature Date

Signature Date

Date of Service (For NASD office use only)

9912046

The Panel has assessed \$1,000.00 of the forum fees to Claimant.  
The Panel has assessed \$500.00 of the forum fees to Respondent Oppenheimer.  
The Panel has assessed \$500.00 of the forum fees to Respondent Gibson.

**Fee Summary**

Claimant be and hereby is solely liable for:

Initial Filing Fee	= \$ 120.00
Forum Fees	= \$1,000.00
Total Fees	= \$1,120.00
Less payments	= \$520.00
Balance Due NASD Regulation, Inc.	= \$600.00

Respondent Oppenheimer be and hereby is solely liable for:

Member Fees	= \$2,400.00
Forum Fees	= \$ 500.00
Total Fees	= \$2,900.00
Less payments	= \$2,400.00
Balance Due NASD Regulation, Inc.	= \$ 500.00

Respondent Gibson be and hereby is solely liable for:

Forum Fees	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 0.00
Balance Due NASD Regulation, Inc.	= \$ 500.00

All balances are due and payable to NASD Regulation, Inc.

**Concurring Arbitrators' Signature(s)**

James Cormack  
Public Arbitrator, Chairperson

Signature Date

Nicholas Pulignano  
Public Arbitrator

Signature Date

Stephen P. Savitt  
Stephen Savitt  
Industry Arbitrator

12/29/99  
Signature Date

Date of Service (For NASD office use only)