

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

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In the Matter of the Arbitration Between:

OTA Limited Partnership and Triage Capital Management, L.P., (Claimants) vs. CIBC Oppenheimer Corp., (Respondent)

Case Number: 99-00551

Hearing Site: New York, New York

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**REPRESENTATION OF PARTIES**

Claimants, OTA Limited Partnership and Triage Capital Management, L.P., hereinafter collectively referred to as "Claimants": Theodore Altman, Esq., Piper Marbury Rudnick & Wolfe, LLP, New York, NY. Mr. Altman was previously with the law firm of Gordon Altman Butowsky Weitzen Shalov & Wein.

CIBC Oppenheimer Corp., hereinafter referred to as "Respondent": Daniel A. Greenstone, Esq., CIBC World Markets, New York, NY. Previously represented by: Russel C. Katz, Esq., CIBC World Markets, New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: February 8, 1999.

OTA signed the Uniform Submission Agreement: September 18, 1998.

Triage signed the Uniform Submission Agreement: February 4, 1999.

Statement of Answer and Motion to Dismiss filed by Respondent on or about: May 19, 1999.

Respondent signed the Uniform Submission Agreement: February 15, 2000.

**CASE SUMMARY**

Claimants asserted the following causes of action: failure to provide advance notice regarding buy-ins of short positions in Claimants' accounts and failure to provide Claimants with a satisfactory explanation for said buy-ins.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: the claim fails to state a cause of action; Claimants gave Respondent discretion to execute buy-ins in their accounts; the Claimants were notified about the buy-ins; Claimants' analysis of the present value of the short positions is pure speculation; and Claimants are not entitled to lost profits.

**RELIEF REQUESTED**

Claimants requested that Respondent be directed to restore to their respective accounts the

short positions they initially established and/or that Claimants be awarded such other relief as deemed appropriate.

Respondent requested that the claim be denied in its entirety.

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

At the close of Claimants' case, Respondent made a Motion to Dismiss. The Panel deferred decision, and ordered the parties to submit briefs regarding the issue. After considering the parties' briefs, the Panel granted the Motion to Dismiss. This decision is reflected in the "Award" section below.

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, and the post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are hereby dismissed in their entirety.
2. All other requests for relief are hereby 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 = \$ 500.00

#### **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. In this matter, OTA Limited Partnership and CIBC Oppenheimer Corp. are parties.

#### **OTA Limited Partnership**

Member surcharge	= \$1,200.00
Pre-hearing process fee	= \$ 600.00

Hearing process fee = \$2,000.00

CIBC Oppenheimer Corp.

Member surcharge = \$1,200.00

Pre-hearing process fee = \$ 600.00

Hearing process fee = \$2,000.00

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 \$600.00 = \$ 600.00

Pre-hearing conference: January 24, 2000 1 session

Two (2) Hearing sessions x \$600.00 = \$1,200.00

Hearing Date: April 6, 2000 2 sessions

Total Forum Fees = \$1,800.00

1. The Panel has assessed \$900.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$900.00 of the forum fees against Respondent.

Fee Summary

1. Claimants be and hereby are jointly and severally liable for:

Initial Filing Fee = \$ 500.00

Forum Fees = \$ 900.00

Total Fees = \$1,400.00

Less payments = \$1,100.00

Balance Due NASD Regulation, Inc. = \$ 300.00

2. OTA be and hereby is solely liable for:

Member Fees = \$3,800.00

Total Fees = \$3,800.00

Less payments = \$3,800.00

Balance Due NASD Regulation, Inc. = \$ 0.00

3. CIBC be and hereby is solely liable for:

Member Fees = \$3,800.00

Forum Fees = \$ 900.00

Total Fees = \$4,700.00

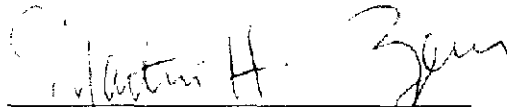
Less payments = \$1,800.00

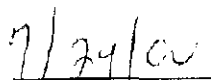
Balance Due NASD Regulation, Inc. = \$2,900.00

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

**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.

  
\_\_\_\_\_  
Martin H. Zern, ~~JD~~ Esq.  
Public Arbitrator, Presiding Chair

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

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Edward K. Lenci, Esq.  
Public Arbitrator

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

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Joseph D. Cosgrove, Esq.  
Industry Arbitrator

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Signature Date


August 22, 2000  
Date of Service (For NASD office use only)

**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.

\_\_\_\_\_  
Martin H. Zern, J.D.  
Public Arbitrator, Presiding Chair

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Signature Date

  
\_\_\_\_\_  
Edward K. Lenci, Esq.  
Public Arbitrator

  
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Signature Date

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Joseph D. Cosgrove, Esq.  
Industry Arbitrator

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Signature Date

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August 22, 2000  
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