

**AWARD
NASD Regulation, Inc.**

In the Matter of the Arbitration Between

Name of Claimant

Edward G. Dietrich

and

99-01448
Scottsdale, Arizona

Name of Respondents

CIBC Oppenheimer, a division of CIBC World Markets Corp.
Donald B. Giello

REPRESENTATION OF PARTIES

Edward G. Dietrich ("**Claimant**") was represented by David C. Anson, Esq., DeConcini McDonald Yetwin & Lacy, Tucson, Arizona.

CIBC Oppenheimer, a division of CIBC World Markets Corp. ("**Respondent CIBC**") and Donald B. Giello ("**Respondent Giello**") were represented by Daniel A. Greenstone, Esq., CIBC World Markets, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about March 26, 1999. Submission Agreement of Claimant Edward G. Dietrich was signed on March 18, 1999.

Statement of Answer was filed by Respondents CIBC Oppenheimer, a division of CIBC World Markets Corp. and Donald B. Giello on or about July 12, 1999. Submission Agreement of Respondent CIBC Oppenheimer, a division of CIBC World Markets Corp. was signed on July 8, 1999 by Michele Murphy.

CASE SUMMARY

Claimant submitted the following summary:

Claimant retired in 1993. At that time Claimant invested all his retirement savings (\$137,147 cash and 227 shares GMC stock) with Bear Stearns & Co in California. His investment objectives were safety of principal and growth. Claimant had no prior investment experience.

Claimant's broker at Bear Stearns & Co., R.S. Riley, transferred to CIBC in Houston, Texas and took Claimant's account with him. Mr. Riley left CIBC in early 1995 and Claimant's account was transferred to Respondent Giello at CIBC in Houston.

Giello solicited Claimant to make investments which violated Claimant's known investment objectives and churned Claimant's account.

Respondents submitted the following summary:

Claimant was contacted by Respondent Donald B. Giello around February of 1995 after Claimant's previous broker left Respondent CIBC. Claimant expressed his dissatisfaction to Mr. Giello over the choice of investments that were currently in his account.

On or about March 14, 1995, Mr. Giello discussed with Claimant an investment strategy that focused on small to mid cap growth stocks. After reviewing materials sent to him regarding Mr. Giello's investment strategy, Claimant expressed his desire to apply Mr. Giello's investment strategy to his own account.

Claimant consented to each transaction Mr. Giello effected on his behalf. In addition, Claimant received and reviewed the confirmations and monthly statements sent to him regarding his account.

The account performed well during the first year following Claimant's decision to invest in small to mid cap growth stocks.

Beginning in May of 1996 the NASDAQ market, where the majority of Claimant's stocks traded, began to correct causing many small cap growth stocks to decline in value.

Claimant alleges Mr. Giello made investments that were unsuited for Claimant, and further that Mr. Giello "churned" claimant's account. At all times, however, Mr. Giello recommended investments to Claimant that were consistent with the investment strategy Claimant chose to pursue. Furthermore, at no time did Mr. Giello execute a transaction in Claimant's account without Claimant's authority.

Although Claimant alleges losses totaling \$128,024.00, the actual decline in total value of Claimant's account was approximately \$18,000.00.

RELIEF REQUESTED

Claimant requested an award in the approximate amount of \$128,000.00, attorneys' fees and costs.

Respondents requested that the claims asserted against them be denied in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Donald B. Giello did not file with the NASD Regulation, Inc. Office of Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with the NASD Regulation, Inc. Office of Dispute Resolution (the "NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents CIBC Oppenheimer, a division of CIBC World Markets Corp. and Donald B. Giello shall be and hereby are jointly and severally liable for and shall pay to Claimant Edward G. Dietrich the sum of \$54,000.00 (**Fifty Four Thousand Dollars**).
2. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice.
3. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees.

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 = \$300.00

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 is CIBC Oppenheimer, a division of CIBC World Markets Corp.

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$2,500.00

Forum Fees and Assessments

The Arbitration Panel assesses forum fees for each hearing session conducted. A hearing 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 Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference(s): November 16, 1999 1 session	
Number (#) Hearing sessions x \$1,125.00	= \$3,375.00
Hearing Date(s): March 1, 2000 2 sessions	
March 2, 2000 1 sessions	
Total Forum Fees	= \$4,500.00

The Arbitration Panel has assessed \$4,500.00 of the forum fees jointly and severally to CIBC Oppenheimer, a division of CIBC World Markets Corp. and Donald B. Giello.

Fee Summary

Claimant, Edward G. Dietrich, shall be and hereby is liable for:

<u>Initial Filing Fee</u>	= \$300.00
Total Fees	= \$300.00
<u>Less payments</u>	= \$1,425.00
Balance to be refunded by NASD Regulation, Inc.	= \$1,125.00

Respondent, CIBC Oppenheimer, a division of CIBC World Markets Corp., shall be and hereby is liable for:

<u>Member Fees</u>	= \$4,600.00
Total Fees	= \$4,600.00
<u>Less payments</u>	= \$4,600.00

Balance Due NASD Regulation, Inc. = \$ 0.00

Respondents, CIBC Oppenheimer, a division of CIBC World Markets Corp. and Donald B. Giello, shall be and hereby are jointly and severally liable for:

Forum Fees = \$4,500.00
Balance Due NASD Regulation, Inc. = \$4,500.00

All balances are due to NASD Regulation, Inc.

Dated:

/s/ Charles A. Finch
Charles A. Finch, Esq.
Public Arbitrator, Presiding Chair

March 2, 2000

/s/ Mark D. Chester
Mark D. Chester, Esq.
Public Arbitrator

March 2, 2000

/s/ Mercedes G. Johnson
Mercedes G. Johnson
Industry Arbitrator

March 2, 2000

Balance Due NASD Regulation, Inc.

= \$ 0.00

Respondents, CIBC Oppenheimer, a division of CIBC World Markets Corp. and Donald B. Giello, shall be and hereby are jointly and severally liable for:

Forum Fees

= \$4,500.00

Balance Due NASD Regulation, Inc.

= \$4,500.00

All balances are due to NASD Regulation, Inc.

Dated:

Charles A. Finch
Charles A. Finch, Esq.
Public Arbitrator, Presiding Chair

March 2, 2000

Mark D. Chester
Mark D. Chester, Esq.
Public Arbitrator

3/2/00

Mercedes G. Johnson
Mercedes G. Johnson
Industry Arbitrator

3/2/00