

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

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In the Matter of the Arbitration Between:

Richard Serbin, (Claimant) vs. CIBC Oppenheimer Corporation, (Respondent).

Case Number: 99-02328

Hearing Site: Houston, Texas

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**REPRESENTATION OF PARTIES**

Claimant, Richard Serbin, hereinafter referred to as "Claimant": Richard L. Rothfelder, Esq. and Michael C. Falick, Esq., Fothfelder & Falick, LLP, Houston, Texas and J. Randle Henderson, Esq., Houston, Texas.

Respondent, CIBC Oppenheimer Corporation, hereinafter referred to as "Respondent": Joseph Sullivan, Esq. and Michelle A. Murphy, Esq., CIBC Oppenheimer Corporation, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on or about: May 20, 1999

Claimant signed the Uniform Submission Agreement: May 18, 1999

Statement of Answer filed by Respondent on or about: August 18, 1999

Respondent signed the Uniform Submission Agreement: August 24, 1999

**CASE SUMMARY**

Claimant asserted the following causes of action: federal statutory fraud; state statutory fraud; state common law fraud; breach of fiduciary duty; breach of good faith and fair dealing; negligence; gross negligence; violations of the Deceptive Trade Practice - Consumer Protection Act; and intentional infliction of emotional distress. The causes of action related to the order executions of Emerging Markets Income Fund II in June of 1998.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted the following defenses: Claimant failed to state a claim upon which relief could be granted; Claimant's statutory securities fraud claims were barred because his broker did not act with the

requisite scienter; and Claimant's claims were barred by the applicable statutes of limitations.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	\$532,660.77
Punitive Damages	unspecified
Interest	unspecified
Attorneys' Fees	unspecified
Other Costs	unspecified
Other Monetary/Non-Monetary Relief if any:	\$1,597,982.30

Respondent requested:

Dismissal of Claim	
Other Costs	unspecified

### **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.

### **AWARD**

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

1. Respondent, CIBC Oppenheimer Corporation, is liable for and shall pay to Claimant, Richard Serbin, \$260,956.23 in compensatory damages plus simple interest at the rate of 10% per annum beginning 30 days after receipt of this award until paid;
2. Respondent, CIBC Oppenheimer Corporation, is liable for and shall pay to Claimant, Richard Serbin, \$40,000 in attorneys' fees. In deciding to award attorneys' fees, the Panel considered the pleadings, the evidence and the testimony presented by the parties as well as the Texas Securities Act and Section 38.001 of the Texas Civil Practice and Remedies Code, the legal authority provided by Claimant; and
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 Regulation, Inc. will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee = \$500

### **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(s) is CIBC Oppenheimer Corporation.

Member surcharge = \$2,500

Pre-hearing process fee = \$600

Hearing process fee = \$4,500

### **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 arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (1) Pre-hearing sessions with a single arbitrator x \$450	= \$900
Pre-hearing conferences: December 7, 1999	1 session
March 29, 2000	1 session

Six (6) Hearing sessions x \$1,200	= \$7,200
Hearing Date: April 13, 2000	2 sessions
April 14, 2000	2 sessions
May 12, 2000	2 sessions
<hr/> Total Forum Fees	<hr/> = \$8,100

1. The Panel has assessed \$3,825 of the forum fees to Richard Serbin.
2. The Panel has assessed \$4,275 of the forum fees to CIBC Oppenheimer Corporation.

### **Fee Summary**

1. Claimant, Richard Serbin, be and hereby is solely liable for:

Initial Filing Fee	= \$500
Forum Fees	= \$3,825
<hr/> Total Fees	<hr/> = \$4,325
<u>Less payments</u>	<u>= \$1,700</u>
Balance Due NASD Regulation, Inc.	= \$2,625



2. Respondent, CIBC Oppenheimer Corporation, be and hereby is solely liable for:

Member Fees	= \$7,600
Forum Fees	= \$4,275
<hr/> Total Fees	<hr/> = \$11,875
Less payments	= \$3,975
Balance Due NASD Regulation, Inc.	= \$7,900

All balances are due to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

\_\_\_\_\_  
Dennis H. Taylor, Esq.  
Public Arbitrator, Presiding Chair

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

  
\_\_\_\_\_  
Ray L. Cox, Jr., Esq.  
Public Arbitrator

5/31/00  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Nathan Levy  
Industry Arbitrator

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

\_\_\_\_\_  
Date of Service (For NASD office use only)

NASD Regulation, Inc., Office of Dispute Resolution  
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2. Respondent, CIBC Oppenheimer Corporation, be and hereby is solely liable for:

Member Fees	= \$7,600
Forum Fees	= \$4,275
<hr/> Total Fees	<hr/> = \$11,875
Less payments	= \$3,975
Balance Due NASD Regulation, Inc.	= \$7,900

All balances are due to NASD Regulation, Inc.

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Public Arbitrator, Presiding Chair

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Nathan Levy  
Industry Arbitrator

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Signature Date

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Date of Service (For NASD office use only)