

Award
NASD Dispute Resolution, Inc.

In the Matter of the Arbitration Between:

Claimant Kevin Carroll, v. Respondent CIBC Oppenheimer Corporation, Eric P. Weschke, Salvatore J., Sapienza, Tasin & Company, Inc.

Case Number: 99-02818

Hearing Site: Houston, Texas

REPRESENTATION OF PARTIES

Claimant Kevin Carroll, hereinafter referred to as "Claimant" was represented by Royal B. Lee, III, Esq., of Bingham & Lee, P.C., located in San Antonio, Texas.

Respondent, CIBC World Markets Corp., hereinafter referred to as "CIBC", was represented by Stephen Lee, Esq., of Doyle, Rider, Restrepo, Harvin & Robbins located in Houston, Texas.

Respondent Eric P. Weschke, hereinafter referred to as "Mr. Weschke" was represented by Steven Fuller, Esq. of Nixon & Peabody LLP., located in Houston, Texas.

Respondent Salvatore J. Sapienza, hereinafter referred to as "Mr. Sapienza", and Tasin & Company, hereinafter referred to as "Tasin", initially represented by George F. Meierhofer, Esq. of Camhy, Karlinsky & Stein located in New York, New York were in *pro se* by the time of the hearing. These Respondents were located in Hauppauge, NY was in *pro se*.

CASE INFORMATION

Claimant filed the Statement of Claim on or about: June 15, 1999.

Claimant signed the Uniform Submission Agreement on April 6, 1999.

Respondent CIBC filed a Statement of Answer on September 18, 1999.

Respondent CIBC did not file sign a Uniform Submission Agreement.

Respondent Mr. Weschke filed an Answer on or about: September 7, 1999.

Respondent Mr. Weschke did not sign a Uniform Submission Agreement.

Respondent Salvatore J. Sapienza and Tasin & Company and filed a Joint Statement of Answer on September 1, 1999.

Respondent Salvatore J. Sapienza signed a Uniform Submission Agreement on September 13, 1999.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitability; misrepresentation; negligence; failure to manage Claimant's account in light of market conditions; failure to notify or inform Claimant of the prohibition on margin trading in a pension account; fraudulent violation of Rule 10b-5 of the Securities and Exchange Commission; violation of 27.01 of the Texas Business and Commerce Code; violation of Article 581-33(A) of the Revised Civil Statutes of the "Texas Securities Act"; breach of common law duties of ordinary care/ and or good faith , fair dealing, and utmost candor as fiduciary to Claimant.

Respondent Eric Weschke filed an Answer in which he denied all of the allegations in the Statement of Claim and set forth the following affirmative defenses: the statement of claim fails to state a claim upon which relief may be granted; Mr. Carroll failed to mitigate his losses; Mr. Carroll's losses are due to his own conduct and not that of the Respondents; the investments and use of margin in Carroll's account's was suitable for Carroll and consistent with Carroll's investment objectives; Carroll's claim's are barred by the doctrines of waiver, ratification , laches, offset, estoppel, and contributory/or comparative negligence; any losses sustained by Carroll were caused by market forces beyond the control and the responsibility of Respondents; there is no private right of action under the rules and procedures of the NASD or other self-regulatory organization.

Respondents Mr. Sapienza and Tasin & Co., filed a Joint Statement of Answer in which they denied the allegations in the Statement of Claim and set forth the following affirmative defenses: The Statement of Claim fails to state a claim upon which relief may be granted; Respondents at all times acted in a professional manner and in conformity with all applicable rules and regulations; fulfilled their duties and responsibilities and acted in good faith; the Tasin Respondents did not engage in any fraudulent, deceptive or unlawful practices and did not make any misrepresentations of material fact or fail to disclose material facts to Claimant; all commissions, mark-ups and margin interest charged to Claimant's accounts by Tasin were reasonable, authorized and permitted by the applicable rules and regulations; Claimant didn't notify Respondents in a timely manner of perceived problems with the accounts; Claimant authorized every transaction in his account; Claimant failed to exercise due diligence; Claimant's claims are barred by the doctrine of laches, unclean hands, ratification and estoppel; Tasin did not owe a fiduciary duty to Claimant; Claimant failed to mitigate his damages.

Respondent CIBC Oppenheimer filed a Statement of Answer in which it denies the allegations in the Statement of Claim and sets forth the following affirmative defenses: as a matter of law, Oppenheimer did not owe a duty to Carroll: Carroll is barred from recovery because he did not suffer any injury by reason of the conduct of Oppenheimer; Carroll's claims are barred by his failure to exercise due diligence and by the disregard of the risks that were known or should have been known to him; to the extent that Carroll incurred any damages as alleged, said damages were caused by intervening or superceding events, or by the conduct of other parties , for which Oppenhiemer is not

responsible, Carroll failed to mitigate his damages, Oppenheimer denies that it is or was a "fiduciary" under 29 U.S.C. Section 1106.

Respondent CIBC filed a motion to dismiss on September 7, 1999. Claimant filed a Response to the motion to dismiss on October 15, 1999. The Panel denied the Motion to Dismiss.

OTHER ISSUES CONSIDERED AND DECIDED

Claimant settled and withdrew his claims against Eric Weschke prior to the initial hearing date of November 6, 2000. Claimant severed its claims against CIBC Oppenheimer Corporation on or about November 3, 2000.

At the hearing the Claimant submitted a Motion for Leave to Amend the Statement of Claim. The Panel granted the motion for leave Claimant also offered into evidence a settlement agreement in which Respondents. Tasin and Sapienza agreed to a 12 month schedule of payments totaling \$340,000.00 to be made jointly and severally by Respondents. Tasin and Sapeinza made payments pursuant to the payment schedule for two months. Payments made in November of 2000 and December of 2000 totaled \$67,280.00. Thereafter, the Respondents defaulted. As a result the Claimant brought a motion to have this settlement agreement enforced by the Arbitration Panel.

Respondents Tasin and/ or its representatives, and Salvatore Sapienza did not appear at the hearing. However, upon review of the file and the representations made by/on behalf of the Claimant, the undersigned Panel determined that Respondents Tasin and Company and Salvatore Sapienza have been properly served with the Statement of Claim and received due notice of the hearing, and that arbitration of the matter would proceed without said Respondents present, in accordance with the NASD Code of Arbitration Procedure (the "Code").

Respondent CIBC Oppenheimer, Eric P. Weschke and Tasin & Company Inc., did not file with NASD Dispute Resolution, Inc. Properly executed submission to arbitration but are required to submit to arbitration pursuant to the Code and, having answered the claim, are bound by the determination of the Panel on all issues submitted

RELIEF REQUESTED

Claimant requested:

Compensatory Damages	\$500,001.00
Punitive Damages	unspecified
Costs	unspecified
Interest	unspecified
Attorneys' fees	unspecified

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

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. Respondents Tasin & Company, Inc. and Salvatore Sapienza are jointly and severally liable and shall pay to Claimant Kevin Carroll compensatory damages in the sum of \$340,000.00 less \$67,280.00 for payments made. Therefore, Tasin & Company, Inc. and Salvatore Sapienza are jointly and severally liable to Claimant and shall pay the sum of \$272,270.00;
2. CIBC Oppenheimer Corp., is dismissed from this action in its entirety;
3. Eric Weschke is dismissed from this action in its entirety;
4. Except as otherwise specified herein, each party shall bear its own costs and attorney's fees;
5. Any and all relief not specifically addressed herein is denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial Claim Filing Fee	= \$375.00
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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 at the time of the event(s) giving rise to the dispute. In this matter, the member firms are parties.

Member surcharge	= \$2,000.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$ 3,500.00

Forum Fees and Assessments

The Panel has the authority to assess 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 a single arbitrator x \$450.00	=\$ 450.00
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	August 7, 2000	1 session	
Three (3) Pre-hearing sessions with panel x \$ 1,200.00			= \$ 3,600.00
Pre-hearing conference:	January 28, 2000	1 session	
	May 1, 2000	1 session	
	May 10, 2001	1 session	
Four (4) Hearing sessions x \$1,200.00			= \$ 4,800.00
Hearing Dates:	March 25, 2002	2 sessions	
	March 26, 2002	2 sessions	
Total Forum Fees			= \$8,850.00

The Panel has assessed \$8,850.00 of the forum fees to Respondents Tasin & Company and Salvatore Sapienza, jointly and severally.

Fee Summary

1. Claimant Kevin Carroll is solely liable for:

Initial Filing Fee	= \$ 375.00
<u>Less payments</u>	<u>= \$ 2,125.00</u>
Balance Refunded by NASD Dispute Resolution, Inc.	= \$ 1,750.00

2. Respondent CICB Oppenheimer is solely liable for:

Member Fees	= \$ 6,100.00
<u>Less payments</u>	<u>= \$ 4,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 2,000.00

3. Respondent Tasin & Company is solely liable for:

Member Fees	= \$ 6,100.00
<u>Less payments</u>	<u>= \$ 6,100.00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$.00

4. Respondents Tasin and Company and Salvatore Sapienza are jointly and severally liable for:

Forum Fees	= \$ 8,850.00
<u>Less payments</u>	<u>= \$ 00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,850.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

R. Lee Britton Jr., Esq.	- Public Arbitrator, Presiding Chair
John K. Boyce, III, Esq.	- Public Arbitrator
Jonathan Burke Rada, CFP	- Non-Public Arbitrator

Concurring Arbitrators' Signatures

R. Lee Britton Jr.,
Public Arbitrator, Presiding Chair

Signature Date

John K. Boyce, III, Esq.
Public Arbitrator

Signature Date

Jonathan Burke Rada, CFP
Non-Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

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4. Respondents Tasin and Company and Salvatore Sapienza are jointly and severally liable for:

Forum Fees	= \$ 8,850.00
<u>Less payments</u>	<u>= \$ 00</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,850.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

R. Lee Britton Jr., Esq.

- Public Arbitrator, Presiding Chair

John K. Boyce, III, Esq.

- Public Arbitrator

Jonathan Burke Rada, CFP

- Non-Public Arbitrator

Concurring Arbitrators' Signatures



R. Lee Britton Jr.,
Public Arbitrator, Presiding Chair

5-7-02

Signature Date

John K. Boyce, III, Esq.
Public Arbitrator

Signature Date

Jonathan Burke Rada, CFP
Non-Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

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4. Respondents Tasin and Company and Salvatore Sapienza are jointly and severally liable for:

Forum Fees	= \$ 8,850.00
Less payments	= \$ 00
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,850.00

All balances are due to NASD Dispute Resolution, Inc.

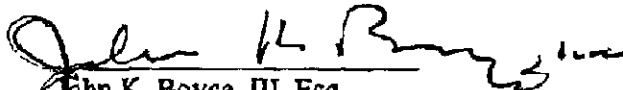
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R. Lee Britton Jr.,
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Signature Date



John K. Boyce, III, Esq.
Public Arbitrator

5/7/02

Signature Date

Jonathan Burke Rada, CFP
Non-Public Arbitrator

Signature Date

Date of Service (For NASD-Dispute Resolution office use only)

NASD-DR # 99-02818

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4. Respondents Tasin and Company and Salvatore Sapienza are jointly and severally liable for:

Forum Fees	= \$ 8,850.00
<u>Less payments</u>	= \$ 00
Balance Due NASD Dispute Resolution, Inc.	= \$ 8,850.00

All balances are due to NASD Dispute Resolution, Inc.

ARBITRATION PANEL

R. Lee Britton Jr., Esq.
John K. Boyce, III, Esq.
Jonathan Burke Rada, CFP

- Public Arbitrator, Presiding Chair
- Public Arbitrator
- Non-Public Arbitrator

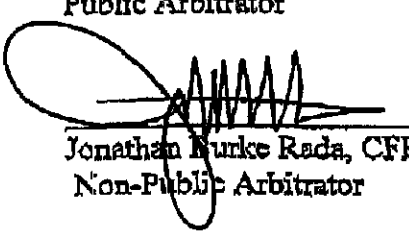
Concurring Arbitrators' Signatures

R. Lee Britton Jr.,
Public Arbitrator, Presiding Chair

Signature Date

John K. Boyce, III, Esq.
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Jonathan Burke Rada, CFP
Non-Public Arbitrator

5/7/02

Signature Date

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