

**Award**  
**NASD Dispute Resolution, Inc.**

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In the Matter of the Arbitration Between

**Name of Claimants**

Miles & Rosalie C. Lerman

Case No. 99-04468

**Name of Respondent**

CIBC Oppenheimer Corp.

Location: Philadelphia, PA

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**REPRESENTATION OF PARTIES**

Claimants, Miles and Rosalie Lerman ("Claimants") were represented by: William A. Harvey, Esq. and Susan M. Dean, Esq. of the law firm of Klehr, Harrison, Harvey, Branzburg & Ellers, LLP, Philadelphia, PA.

Respondent, CIBC Oppenheimer Corp. ("Respondent") was represented by: Lloyd S. Clareman, Esq., of Lloyd S. Clareman, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: September 30, 1999

Claimants signed their Uniform Submission Agreement: October 29, 1999

Claimants Reply to Respondent's Motion to Dismiss was filed on: December 30, 1999

Statement of Answer and Motion to Dismiss filed by Respondent on or about: December 10, 1999

Respondent signed the Uniform Submission Agreement.

**CASE SUMMARY**

Claimants, in their statement of claim, asserted the following causes of action: breach of fiduciary duties, lack of appropriate supervision, unsuitability, unauthorized trading, failure to supervise and negligence. Claimants alleged, among other things, that unsuitable penny stocks were purchased on margin for Claimants' accounts. Claimants alleged that this activity, which included unauthorized trading on margin, exposed Claimants to margin

interest and margin calls.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted that Claimants were clients of Dimedio, Kirchhoff & Company and the Kirchhoff Organization ("DKC"), and not clients of Respondent. Respondent maintained that it has no duty, legal or otherwise, to supervise the actions of the agents and/or registered representatives of DKC. Respondent maintained, among other things, that it provided certain back office functions for DKC pursuant to an executed written Clearing Agreement that establishes the responsibilities of Respondent and DKC. Respondent maintained that this agreement makes clear that a clearing broker like Respondent has no liability for the actions of the introducing firm, such as DKC.

Claimants replied that contrary to Respondent's position, that clearing brokers can be held liable for unauthorized activity initiated by an introducing broker.

#### **RELIEF REQUESTED**

Claimants requested:

Compensatory Damages	\$2,500,000
Punitive Damages	\$ 500,000
Interest	unspecified
Other Costs and Fees	unspecified

Respondent requested that Claimants' claim should be dismissed, or, in the alternative, denied in its entirety.

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

During its deliberation, the Panel denied Respondent's Motion to Dismiss.

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 briefs submitted by the parties, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent is liable and shall pay the Claimants the sum of \$75,000; no prejudgment interest is awarded on this amount.
2. Claimants' claim for punitive damages is denied in its entirety.

3. That the parties shall bear their respective costs and expenses, including attorneys' fees, except as Fees are specifically addressed below.
4. That any and all claims for relief not specifically addressed are denied in their entirety.

### 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 = \$ 500

#### 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, the member firm is a party.

Member surcharge	= \$2,500
Pre-hearing process fee	= \$ 600
Hearing process fee	= \$4,500

#### Adjournment Fees

Adjournment requested during these proceedings:

January 16, 2001, adjournment by Claimants = \$1,200

#### 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 (2) Pre-hearing sessions with Panel x \$1,200 = \$ 2,400

Pre-hearing conferences:	September 26, 2000	1 session
	January 4, 2001	1 session

Thirteen (13) Hearing sessions x \$1,200 = \$15,600

Hearing Dates:	January 17, 2001	3 sessions
	January 18, 2001	2 sessions
	January 19, 2001	2 sessions
	February 12, 2001	2 sessions
	February 13, 2001	2 sessions
	<u>March 1, 2001</u>	<u>2 sessions</u>

Total Forum Fees = \$18,000

1. The Arbitration Panel has assessed the forum fees to Respondent.

Fee Summary

Claimants are assessed the following fees:

Initial Filing Fee	= \$ 500
<u>Adjournment Fee</u>	<u>= \$ 1,200</u>
Total Fees	= \$ 1,700
<u>Less payments</u>	<u>= \$ 1,700</u>
Balance Due NASD Dispute Resolution, Inc.	= \$ 0

Respondent is assessed the following fees:

Member Fees	= \$ 7,600
<u>Forum Fees</u>	<u>= \$18,000</u>
Total Fees	= \$25,600
<u>Less payments</u>	<u>= \$ 7,600</u>
Balance Due NASD Dispute Resolution, Inc.	= \$18,000

All balances are due and payable to NASD Dispute Resolution, Inc.

Concurring Arbitrators' Signatures



Daniel E. Miller, Esq.  
Public Arbitrator, Presiding Chairperson



Signature Date

\_\_\_\_\_  
Marshall S. Galinsky, Esq.  
Public Arbitrator, Panelist

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

\_\_\_\_\_  
Gordon F. Linke  
Non Public Arbitrator, Panelist

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

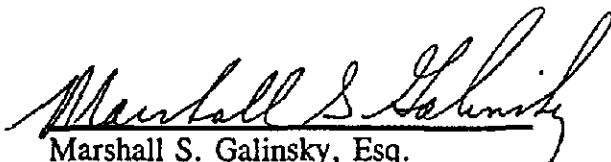


Date of Service (For NASD-DR office use only)

**Concurring Arbitrators' Signatures**

\_\_\_\_\_  
Daniel E. Miller, Esq.  
Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
Marshall S. Galinsky, Esq.  
Public Arbitrator, Panelist

3/12/01  
\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Gordon F. Linke  
Non Public Arbitrator, Panelist

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

March 23, 2001  
Date of Service (For NASD-DR office use only)

FROM :

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03-08-2001 13:00 From-NASD

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Arbitration No. 99-04468

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Non Public Arbitrator, Panelist

3/8/01  
Signature Date

March 23, 2001  
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