

Double Whammy

CIBC HIT WITH DEFAMATION COUNTER-CLAIM

Some firms apparently don't know when to leave well-enough alone. CIBC Oppenheimer, having settled with a broker over his allegations of defamation of character when he left the firm three years ago, has had a subsequent effort to collect on a promissory note boomerang. The rep filed a counter claim with a New York Stock Exchange arbitration panel based on his original allegations and won, as well as having the charges that he owed on the promissory note dismissed.

Lawyers noted could recall only a few similar cases with the past few years in which a firm's claim was met with a counter-claim and the firm lost on both. The cash award was only \$50,000, but the attorneys said the fact that there was any an award in this case was significant.

The rep, Stuart Garawitz, sued CIBC and two managing directors in 1999 for defamation when they allegedly began telling clients he had left the firm before he was scheduled to do so, according to arbitration documents. Garawitz and the firm reached an agreement over those defamation allegations and he pulled his arbitration claim. CIBC turned around and filed an arbitration claim against him in July 2000 that he owed the firm on a promissory note, which led to Garawitz filing the counter-claim based on his original allegations, charging that a campaign was mounted to destroy his reputation.

Richard Roth, partner at **Litman Krooks & Roth** in New York, who represented Garawitz, pointed out that the rep's Form U-5 was also amended, also a rare win—although in this instance the firm admitted the U-5 departure date was incorrect in testimony, yet had not corrected the error. "That looked bad," said Roth. **Jonathan Kord Lagemann**, a sole practitioner in New York, said reps usually do not win against their firms unless they were not paid, for example. That was not at issue in this case. **Anthony Djinis**, partner at **Pickard & Djinis** in Washington, D.C., speculated that enforcing a promissory note should have been a run of the mill case, but arbitrators are not bound to apply the law, are sometimes unpredictable, and it's hard to figure out why they awarded what they did.

Roth said that the original 1999 agreement did not involve the promissory note. Roth also pointed out that the panel made Oppenheimer pay the forum fees, and speculated that the award was small because Garawitz's production was not that high. Calls to **David Schmidt**, partner at **Lubiner & Schmidt** in New York who represented Oppenheimer, were not returned by press time. Calls to officials at the firm's legal department in New York were referred to a spokesman, who declined to comment.

—Paul Torres