

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Anke Rice and Anke Rice and Jens Gad JTWROS (Claimants) v. Prime Charter LTD.;
Michael Hal Silverman; Mark Alan Hauser; Fahnestock & Co., Inc. (Respondents) v.
Vincent J. Franzone (Third-Party Respondent)

Case Number: 01-01340

Hearing Site: New York, New York

Nature of the Dispute: Customer v. Members and Associated Persons

REPRESENTATION OF PARTIES

Claimants Anke Rice ("Rice") and Anke Rice and Jens Gad JTWROS ("Rice/Gad joint account") hereinafter collectively referred to as "Claimants": Stuart C. Goldberg, Esq., Scottsdale, AZ. Previously represented by: Richard J. Schulman, Esq., Bryan Cave, LLP, New York, NY.

Respondents Prime Charter LTD. ("Prime Charter"), Michael Hal Silverman ("Silverman"), Mark Alan Hauser ("Hauser") and Fahnestock & Co., Inc. ("Fahnestock"): Michael Schwartzberg, Esq., Winget, Spadafora & Schwartzberg, LLP, New York, NY.

Third-Party Respondent Vincent J. Franzone ("Franzone"): Eric S. Hutner, Esq., Law Offices of Eric S. Hutner & Associates, New York, NY.

CASE INFORMATION

Statement of Claim filed on or about: March 16, 2001.

Amended Statement of Claim filed on or about: June 27, 2001.

Second Amended Statement of Claim filed on or about: January 9, 2002.

Third Amended Statement of Claim filed on or about: October 31, 2002.

Rice signed the Uniform Submission Agreement: April 23, 2001.

Rice/Gad joint account signed the Uniform Submission Agreement: April 23, 2001.

Prime Charter's Response to the Amended Statement of Claim filed on or about: July 20, 2001.

Prime Charter's Third-Party Statement of Claim filed on or about: January 25, 2002.

Prime Charter's Response to the Second Amended Statement of Claim filed on or about: March 18, 2002.

Prime Charter did not sign a Uniform Submission Agreement.

Silverman's and Hauser's Response to the Second Amended Statement of Claim filed on or about: March 18, 2002.

Silverman did not sign a Uniform Submission Agreement.

Hauser did not sign a Uniform Submission Agreement.

Fahnestock's Preliminary Response to the Claimants' Third Amended Statement of Claim filed on or about: December 2, 2002.

Fahnestock's Amended Response to the Claimants' Third Amended Statement of Claim filed on or about: December 31, 2002.

Fahnestock did not sign a Uniform Submission Agreement.

Franzone's Response to the Third-Party Claim filed on or about: March 13, 2002.

Franzone signed the Uniform Submission Agreement.

CASE SUMMARY

Claimants asserted the following causes of action: churning; unsuitability; misrepresentations and omissions; unauthorized transactions; negligence and/or breach of fiduciary duty; failure to supervise; respondeat superior; control person liability; failure to report to Franzone's CRD; bad faith refusal to make restitution; wrongful refusal to protect assets; willfully failing to abide by Panel's subpoena; and stripping assets from company in arbitration. Claimants' claims involved common stock, preferred stock and options.

Unless specifically admitted in its Answer, Prime Charter denied the allegations made in the Amended Statement of Claim and Second Amended Statement of Claim. In its Third-Party Claim against Franzone, Prime Charter asserted the following causes of action: contribution and/or indemnification.

Unless specifically admitted in their Answer, Silverman and Hauser denied the allegations made in the Second Amended Statement of Claim.

Unless specifically admitted in its Answer, Fahnestock denied the allegations made in the Third Amended Statement of Claim and asserted various affirmative defenses.

Unless specifically admitted in his Answer, Franzone denied the allegations made in the Third-Party Statement of Claim.

RELIEF REQUESTED

Claimants requested, in addition to commissions and margin interest (unjust enrichment), make-whole damages in the amount of \$989,597.02 calculated as follows:

Net Out-Of-Pocket (NOP)	\$484,135.45
Simple Interest > 2/12/01 (end of account @ NY 9%)	\$ 89,461.99
NOP + Simple Interest > 2/12/01	\$573,597.44
(NOTE: Transfer of \$30,000 > joint account-3/27/00 ignored for combined damages.)	
Simple Interest > 10/14/02 (Third ASOC @ NY 9%)	\$ 86,133.91
NOP + Simple Interest > 10/14/02	\$659,731.35
Attorneys' Fees @ 1/3 of Award (=50% bulk up)	\$329,865.67
NOP + Simple Interest > 10/14/02	\$989,597.02

Claimant also requested punitive damages in the amount of \$2,968,791.06.

Prime Charter requested that the Panel dismiss the claims against Prime Charter in their entirety. In the Third-Party Statement of Claim, Prime Charter requested an award of indemnification and/or contribution against Third-Party Respondent Franzone.

Silverman and Hauser requested dismissal prior to the hearing in this matter and expungement of this claim from their CRD records.

Fahnestock requested an award: (1) dismissing it from this proceeding in its entirety, (2) recommending that this claim be expunged from its CRD record, and (3) awarding it such other and further relief as the Panel deems just and appropriate.

Franzone requested: (1) that the Statement of Claim be dismissed in its entirety, (2) the Third-Party Statement of Claim be dismissed in its entirety, (3) Respondents and Third-Party Respondent should be awarded the costs and disbursements of this action, including attorneys' fees, and (4) the Arbitration Panel should award such other relief as it deems just and proper.

OTHER ISSUES CONSIDERED AND DECIDED

By letter dated June 27, 2001, Claimants withdrew their claims against Vincent Franzone and James A. Gianni without prejudice.

By letter dated October 20, 2003, Claimants dismissed their claims against Silverman and Hauser.

Respondents Prime Charter and Fahnestock did not file with NASD Dispute Resolution properly executed Uniform Submission Agreements but are required to submit to arbitration pursuant to the Code and, having answered the claim, and appeared and

testified at the hearing, are bound by the determination of the Panel on all issues submitted.

At the conclusion of the third day of hearings, Respondent Prime Charter moved to have the claim filed relating to the Rice/Gad joint account dismissed. After due consideration, the Panel denied the Motion.

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. Prime Charter is liable and shall pay to Claimant Rice compensatory damages in the amount of \$196,463.69, plus interest at the rate of 9% from November 16, 1999 until the date of payment. The Panel further finds that if Prime Charter fails to pay the award in its entirety within thirty days from the date of service, then Fahnestock & Co., Inc. n/k/a Oppenheimer & Co. Inc. is liable and shall pay the amount awarded to Claimant Rice less any payments made by Prime Charter.
2. Franzone is liable and shall pay Prime Charter contribution of 45%, or \$88,408.66, of the compensatory damages award against Prime Charter, plus interest at the rate of 9% from November 16, 1999 until the date of payment.
3. Any and all relief requests not specifically addressed herein, including the damages requested for the Rice/Gad joint account, punitive damages, and the requests for expungement, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

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

Initial claim filing fee	= \$ 600.00
Third-Party Claim filing fee	= \$2,000.00

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 persons at the time of the events giving rise to the dispute. Prime Charter, Ltd. is a party.

Member surcharge	= \$2,500.00
Pre-hearing process fee	= \$ 600.00
Hearing process fee	= \$4,500.00

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

Two (2) Pre-hearing sessions with a single arbitrator @ \$450.00	= \$ 900.00
Pre-hearing conferences: March 8, 2002 1 session	
October 16, 2002 1 session	

Six (6) Pre-hearing sessions with Panel @ \$1,200.00	= \$ 7,200.00
Pre-hearing conferences: January 9, 2002 1 session	
May 17, 2002 1 session	
July 2, 2002 1 session	
October 7, 2002 1 session	
April 25, 2003 1 session	
August 12, 2003 1 session	

Eight (8) Hearing sessions @ \$1,200.00	= \$ 9,600.00
Hearing Dates: November 13, 2003 2 sessions	
November 14, 2003 2 sessions	
November 17, 2003 2 sessions	
November 18, 2003 2 sessions	

Total Forum Fees	= \$17,700.00
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1. The Panel has assessed \$8,850.00 of the forum fees jointly and severally against Claimants.
2. The Panel has assessed \$8,850.00 of the forum fees jointly and severally against Prime Charter and Franzone.

Fee Summary

1. Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 600.00
Forum Fees	= \$ 8,850.00
Total Fees	= \$ 9,450.00
<u>Less payments</u>	<u>= \$ 1,800.00</u>
Balance Due NASD Dispute Resolution	= \$ 7,650.00

2. Prime Charter is solely liable for:

Third-Party Claim Filing Fee	= \$ 2,000.00
Member Fees	= \$ 7,600.00
Total Fees	= \$ 9,600.00
<u>Less payments</u>	<u>= \$ 8,300.00</u>
Balance Due NASD Dispute Resolution	= \$ 1,300.00

3. Prime Charter and Franzone are jointly and severally liable for:

Forum Fees	= \$ 8,850.00
Total Fees	= \$ 8,850.00
<u>Less payments</u>	<u>= \$ 0.00</u>
Balance Due NASD Dispute Resolution	= \$ 8,850.00

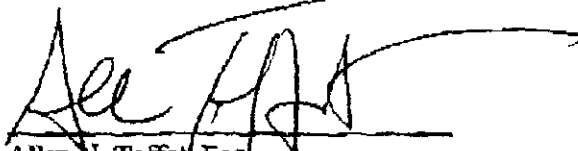
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Allan N. Taffet, Esq.	-	Public Arbitrator, Presiding Chair
Micalyn S. Harris, Esq.	-	Public Arbitrator
Philip W. Gaffney	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.


Allan N. Taffet, Esq.
Public Arbitrator, Presiding Chairperson

12/1/03
Signature Date

Micalyn S. Harris, Esq.
Public Arbitrator

Signature Date

Philip W. Gaffney
Non-Public Arbitrator

Signature Date

December 3, 2003
Date of Service (For NASD Dispute Resolution use only)

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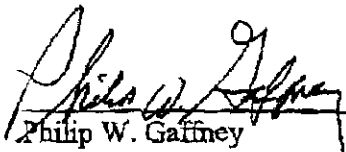
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Public Arbitrator, Presiding Chairperson

Signature Date

Micalyn S. Harris, Esq.
Public Arbitrator

Signature Date



Philip W. Gaffney
Non-Public Arbitrator



Signature Date

December 3, 2003

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