

**Award**  
**NASD Dispute Resolution**

---

In the Matter of the Arbitration Between:

Oppenheimer & Co., Inc., (Claimant) vs. Brett Spindler (Respondent)

Case Number: 04-00169

Hearing Site: New York, New York.

---

Nature of the Dispute: Member v. Associated Person

**REPRESENTATION OF PARTIES**

Claimant Oppenheimer & Co. Inc., hereinafter referred to as "Claimant": Michael J. McAllister, Esq., Satterlee Stephens Burke & Burke LLP, New York, NY.

Respondent Brett Spindler hereinafter referred to as "Respondent": Eugene L. Small, Esq., Alonso, Andalkar & Kahn, P.C., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: January 9, 2004.

Claimant filed its Answer to the Counterclaim on or about: April 4, 2005.

Claimant signed the Uniform Submission Agreement: January 9, 2004.

Statement of Answer and Counterclaim filed by Respondent on or about: March 25, 2004.

Respondent signed the Uniform Submission Agreement: March 25, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract and breach of a promissory note.

Unless specifically admitted in his Answer, Respondent denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

In his Counterclaim, Respondent asserted the following causes of action: failure to pay commissions and to release contributions made into a voluntary deferred compensation plan.

Unless specifically admitted in its Answer to the Counterclaim, Claimant denied the allegations made in the Counterclaim and asserted various affirmative defenses.

### **RELIEF REQUESTED**

Claimant requested compensatory damages in the amount of \$118,557.12 due on the promissory note; interest at the rate of 8% per annum accruing from October 24, 2003 through the date of the arbitration award on the \$118,557.12; \$15,061.57 in trading errors; attorneys' fees; and, all costs incurred in connection with the enforcement and collection of the notes, including NASD filing fees.

Respondent requested that Claimant's Statement of Claim be dismissed in its entirety.

In his Counterclaim, Respondent requested unspecified damages for commissions generated for the month of October 2003; \$35,847.00 in deferred compensation; that Claimant's claims be dismissed; and, that all costs associated with this arbitration be assessed to the Claimant.

Claimant requested that the Counterclaim be dismissed in its entirety.

### **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 is liable and shall pay to the Claimant \$69,830.00 in compensatory damages which includes interest and attorneys' fees.
2. 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 will retain or collect the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 1,000.00
Counterclaim filing fee	= \$ 250.00

#### **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 person at the time of the events giving rise to the dispute. Accordingly, Oppenheimer & Co., Inc., is a member firm.

Member surcharge	= \$ 1,700.00
------------------	---------------

Pre-hearing process fee	= \$	750.00
Hearing process fee	= \$	2,750.00
Total Member fees	= \$	5,200.00

#### **Adjournment Fees**

The following adjournment fees are assessed:

May 3, 4, 5, 6, 2005 adjournment requested by Claimant = \$1,125.00

#### **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:

One (1) Pre-hearing conference session with the Panel @ \$1,125.00 per session = \$ 1,125.00  
Pre-hearing conference: September 15, 2004 1 session

Four (4) Hearing sessions with the Panel @ \$1,125.00 per session = \$ 4,500.00  
Hearing Dates: October 5, 2005 2 sessions  
October 6, 2005 2 sessions

---

Total Forum Fees = \$ 5,625.00

1. The Panel has assessed \$2,812.50 of the forum fees against Claimant.
2. The Panel has assessed \$2,812.50 of the forum fees against Respondent.

#### **Fee Summary**

1. Claimant is solely liable for:

Initial Filing Fee	= \$	1,000.00
Member Fees	= \$	5,200.00
Adjournment Fee	= \$	1,125.00
Forum Fees	= \$	2,812.50
Total Fees	= \$	10,137.50
Less payments	= \$	7,325.00
Balance Due NASD Dispute Resolution	= \$	2,812.50

2. Respondent is solely liable for:

Counterclaim filing Fee	= \$	250.00
Forum Fees	= \$	2,812.50
Total Fees	= \$	3,062.50
Less payments	= \$	975.00
Balance Due NASD Dispute Resolution	= \$	2,087.50

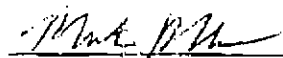
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Martin D. Sklar	-	Non-Public, Presiding Chairperson
James R. Madan	-	Non-Public Arbitrator
John A. Astorina, Esq.	-	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.

  
Martin D. Sklar  
Non-Public Arbitrator, Presiding Chairperson

Nov. 12, 2005  
Signature Date

\_\_\_\_\_  
James R. Madan  
Non-Public Arbitrator

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

\_\_\_\_\_  
John A. Astorina, Esq.  
Non-Public Arbitrator

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

**November 17, 2005**

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution only)

**ARBITRATION PANEL**

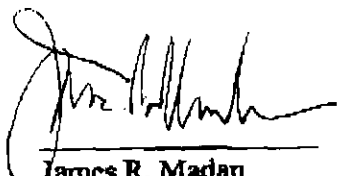
Martin D. Sklar	-	Non-Public, Presiding Chairperson
James R. Madan	-	Non-Public Arbitrator
John A. Astorina, Esq.	-	Non-Public Arbitrator

**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.

\_\_\_\_\_  
Martin D. Sklar  
Non-Public Arbitrator, Presiding Chairperson

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

  
\_\_\_\_\_  
James R. Madan  
Non-Public Arbitrator

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

\_\_\_\_\_  
John A. Astorina, Esq.  
Non-Public Arbitrator

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

**November 17, 2005**

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Martin D. Sklar	-	Non-Public, Presiding Chairperson
James R. Madan	-	Non-Public Arbitrator
John A. Astorina, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

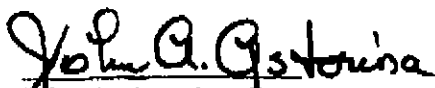
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument, which is my award.

\_\_\_\_\_  
Martin D. Sklar  
Non-Public Arbitrator, Presiding Chairperson

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

\_\_\_\_\_  
James R. Madan  
Non-Public Arbitrator

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

  
John A. Astorina, Esq.  
Non-Public Arbitrator

  
Signature Date

**November 17, 2005**

\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution only)