

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant

Gregory C. Krych, and individually
and on behalf of his IRA accounts

and

Case Number: 04-03596
Hearing Site: Detroit, Michigan

Respondents

Raymond James & Associates, Inc.,
Oppenheimer & Co., Inc., and
Stephen M. Carlson

NATURE OF DISPUTE

Customer v. Members and Associated Person

REPRESENTATION OF PARTIES

Gregory C. Krych, and individually and on behalf of his IRA accounts ("Claimant") was represented by Andrew J. Munro, Esq., and Andrew Zack, Esq., Munro and Zack, P.L.C., Troy, Michigan.

Raymond James & Associates, Inc. ("RJA") and Stephen M. Carlson ("Carlson"), were represented by Raymond W. Henney, Esq., Honigman Miller Schwartz & Cohn LLP, Detroit, Michigan. Honigman Miller Schwartz & Cohn LLP represented Carlson for the time of his employment with RJA.

Oppenheimer & Co., Inc. f/k/a Fahnstock & Co., Inc. ("Oppenheimer") and Carlson hereinafter collectively referred to as "Respondents," were represented by Mark L. Kowalsky, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

CASE INFORMATION

The Statement of Claim was filed on or about May 18, 2004. The Submission Agreement of Claimant was signed on or about May 11, 2004.

The Statement of Answer was filed by RJA on or about July 20, 2004. The Submission Agreement of Raymond James & Associates, Inc. was signed on or about May 27, 2004.

The Motion to Dismiss and Statement of Answer was filed jointly by Oppenheimer and Carlson on or about July 19, 2004. The Submission Agreement of Oppenheimer was signed on or about September 13, 2004. The Submission Agreement of Carlson was signed on or about July 1, 2004.

Claimant filed a Response to Respondents' Motion to Dismiss on or about October 5, 2004.

Claimant filed a Motion for Issuance of Show Cause Order to Oppenheimer on or about July 26, 2005. Oppenheimer filed a Response and Request that the Motion Be Stricken on or about August 10, 2005. RJA filed a Statement on Claimant's Show Cause order on or about August 11, 2005. Claimant filed a Reply Brief in Support of his Motion on or about August 12, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: fraud under 10(b)(5) of the Securities Act of 1934 and the common law; Respondents breached industry standards; misconduct including suitability, misrepresentation/deceptive devices, account control, negligence, failure to disclose/omissions, failure to supervise and breach of contract; violations of state and federal securities law and the common law including breach of contract, respondeat superior/ control person liability, and common law fraud. The causes of action related to Claimant's allegations that Respondents should have protected the value of Claimant's accounts by using various hedging strategies and rudimentary investment strategies such as allocation of risk amongst several market sectors, the elimination of margin trading, and the reduction of the concentration in EMC stock. Claimant asserted that Respondents recommended that Claimant purchase technology stocks on margin which increased his market risk. Claimant's holdings included Microsoft, Gerber, FNMA, Handleman and EMC.

Unless specifically admitted in their Answer, RJA and Carlson, denied the allegations made in the Statement of Claim and asserted defenses including the following: at the time Claimant's accounts were transferred to RJA, they were already highly concentrated in EMC and CheckPoint Software stock and had a substantial margin debit; Claimant's claims are an effort to hold Respondents strictly liable for the performance of the markets; there is no independent cause of action for violations of NASD rules or breach of contract; and Claimant is estopped or otherwise precluded from challenging the transactions in their accounts because Claimant clearly knew about the nature, quality and value of the investment through his experience before transferring to RJA, account statements and summaries provided by RJA and did not raise any objection.

Unless specifically admitted in their Answer, Oppenheimer and Carlson denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Respondents acted in compliance with all applicable rules and regulations, acted in good faith and did not induce the alleged act or acts, if any, constituting alleged

violations of law; the damages allegedly suffered by Claimant have no causal relationship with any act committed by or legally attributable to Respondents; Claimant did not reasonably rely to his detriment on any action of Respondents or any action or inaction legally attributable to Respondents and all trades during the relevant time period were expressly authorized by Claimant, or alternatively were subsequently ratified by Claimant.

RELIEF REQUESTED

Claimant requested an award of \$9,219,698.88 in compensatory damages, plus lost opportunity costs, disgorgement of commissions, margin interest charges, punitive and or exemplary damages, pre-award interest, attorneys' fees, costs, post-award attorneys' fees and costs, and any and all other relief which may be granted by this panel from Respondents Oppenheimer and Carlson.

Claimant requested an award of \$1,622,878.23 in compensatory damages, plus lost opportunity costs, disgorgement of commissions, margin interest charges, punitive and or exemplary damages, pre-award interest, attorneys' fees, costs, post-award attorneys' fees and costs, and any and all other relief which may be granted by this panel from Respondents RJA and Carlson.

RJA requested that the claims asserted against it and Carlson be dismissed in their entirety and that they be awarded their costs, attorneys' fees, and any other relief the panel deemed appropriate. Carlson also requested expungement of all references to this matter from his CRD records.

Oppenheimer and Carlson requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

On or about October 5, 2005, Claimant dismissed with prejudice his claims against RJA and Carlson for acts and omissions committed during the time period while he was employed at RJA. Claimant's remaining allegations against Carlson during his tenure with Oppenheimer are unaffected by this dismissal.

The panel denied Claimant's Motion for Issuance of Show Cause Order to Oppenheimer on the record at the hearing.

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. In either case, the parties have agreed to receive conformed copies of the award while the original(s) remain on file with NASD Dispute Resolution ("NASD").

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Respondents, Oppenheimer & Co., Inc., and Stephen M. Carlson, are jointly and severally liable for and shall pay to Claimant, Gregory C. Krych, and individually and on behalf of his IRA accounts, the sum of \$23,036.25 in compensatory damages;
- 2.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 3.) Any relief not specifically enumerated, including punitive and exemplary damages and attorneys' fees, is hereby denied with prejudice.

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

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Raymond James & Associates, Inc. and Oppenheimer & Co., Inc.

Raymond James & Associates, Inc.

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00

Oppenheimer & Co., Inc.

Member surcharge	= \$ 3,350.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,500.00

Adjournment Fees

Adjournments requested during these proceedings:

June 8-10, 2005 adjournment requested jointly (waived by panel)	= \$ 1,200.00
December 5, 2005, adjournment requested jointly by remaining parties (waived by panel)	= \$ 1,200.00

Three-Day Cancellation Fees

Fees apply when a hearing on the merits is postponed or settled within three business days before the start of a scheduled hearing session:

The parties requested an adjournment on June 7, 2005, for the hearings scheduled through June 10, 2005. = \$ 300.00

Forum Fees and Assessments

The Arbitration 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:

One (1) Pre-hearing session with a single arbitrator x \$450.00 = \$ 450.00
Pre-hearing conference: March 4, 2005 1 session

One (1) Pre-hearing session with Panel x \$1,200.00 = \$ 1,200.00
Pre-hearing conference: October 8, 2004 1 session

Thirty-nine (39) Hearing sessions x \$1,200.00 = \$ 46,800.00

Hearing Dates:

June 7, 2005	1 session
September 21, 2005	2 sessions
September 22, 2005	2 sessions
September 23, 2005	2 sessions
October 6, 2005	2 sessions
October 7, 2005	2 sessions
October 10, 2005	2 sessions
October 11, 2005	2 sessions
October 12, 2005	2 sessions
October 14, 2005	2 sessions
October 31, 2005	1 session
November 1, 2005	2 sessions
November 2, 2005	2 sessions
November 3, 2005	2 sessions
November 15, 2005	2 sessions
November 16, 2005	2 sessions
November 17, 2005	2 sessions
November 18, 2005	2 sessions
November 28, 2005	2 sessions
November 29, 2005	1 session
December 6, 2005	2 sessions

Total Forum Fees = \$ 48,450.00

The Arbitration Panel has assessed \$2,800.00 of the forum fees to Gregory C. Krych, and individually and on behalf of his IRA accounts.

The Arbitration Panel has assessed \$2,800.00 of the forum fees to Raymond James & Associates, Inc.

The Arbitration Panel has assessed \$42,850.00 of the forum fees to Oppenheimer & Co., Inc.

Fee Summary

Claimant, Gregory C. Krych, and individually and on behalf of his IRA accounts, is liable for:

Initial Filing Fee	= \$ 600.00
Three-Day Cancellation Fee	= \$ 66.66
Forum Fees	= \$ 2,800.00
<u>Total Fees</u>	= \$ 3,466.66
<u>Less payments</u>	= \$ 1,800.00
Balance Due NASD Dispute Resolution	= \$ 1,666.66

Respondent, Raymond James & Associates, Inc., is liable for:

Member Fees	= \$ 8,550.00
Three-Day Cancellation Fee	= \$ 66.66
Forum Fees	= \$ 2,800.00
<u>Total Fees</u>	= \$11,416.66
<u>Less payments</u>	= \$10,000.00
Balance Due NASD Dispute Resolution	= \$ 1,416.66

Respondent, Oppenheimer & Co., Inc., is liable for:

Member Fees	= \$ 9,600.00
Forum Fees	= \$42,850.00
<u>Total Fees</u>	= \$52,450.00
<u>Less payments</u>	= \$10,433.34
Balance Due NASD Dispute Resolution	= \$42,016.66

Respondents, Oppenheimer & Co., Inc, and Stephen M. Carlson, are jointly and severally liable for:

Three-Day Cancellation Fee	= \$ 66.66
<u>Total Fees</u>	= \$ 66.66
<u>Less payments</u>	= \$ 66.66
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Carole M. Crosby - Public Arbitrator, Presiding Chair
Harold Hood, J.D. - Public Arbitrator
Norman A. Samson - Non-Public Arbitrator

Concurring Arbitrators:

/s/ Carole M. Crosby
Carole M. Crosby
Public Arbitrator, Presiding Chair

12/08/05
Signature Date

/s/ Harold Hood, J.D.
Harold Hood, J.D.
Public Arbitrator

12/08/05
Signature Date

/s/ Norman A. Samson
Norman A. Samson
Non-Public Arbitrator

12/08/05
Signature Date

12/08/05
Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 04-03596
Award Page 7 of 7

ARBITRATION PANEL

Carole M. Crosby - Public Arbitrator, Presiding Chair
Harold Hood, J.D. - Public Arbitrator
Norman A. Samson - Non-Public Arbitrator

Concurring Arbitrators:

Carole M. Crosby
Public Arbitrator, Presiding Chair

Signature Date

Harold Hood, J.D.
Public Arbitrator

Signature Date


Norman A. Samson
Non-Public Arbitrator

12/08/05
Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 04-03588
Award Page 7 of 7

ARBITRATION PANEL

Carole M. Crosby - Public Arbitrator, Presiding Chair
Harold Hood, J.D. - Public Arbitrator
Norman A. Samson - Non-Public Arbitrator

Concurring Arbitrators:

Carole Crosby
Carole M. Crosby
Public Arbitrator, Presiding Chair

12/8/05
Signature Date

Harold Hood, J.D.
Harold Hood, J.D.
Public Arbitrator

Signature Date

Norman A. Samson
Norman A. Samson
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)


NASD Dispute Resolution
Arbitration No. 04-03596
Award Page 7 of 7

ARBITRATION PANEL

Carole M. Crosby - Public Arbitrator, Presiding Chair
Harold Hood, J.D. - Public Arbitrator
Norman A. Samson - Non-Public Arbitrator

Concurring Arbitrators:

Carole M. Crosby
Public Arbitrator, Presiding Chair



Harold Hood, J.D.
Public Arbitrator

Signature Date

12/8/05

Signature Date

Norman A. Samson
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)