
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Dr. Stanley and Ann Saunders

Case Number: 04-04007

Name of the Respondent

Oppenheimer & Co., Inc., successor to Fahnstock, successor to Josephthal

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Dr. Stanley and Ann Saunders, hereinafter collectively referred to as "Claimants": Bradley R. Stark, Esq., Bradley R. Stark, P.A., Coral Gables, Florida.

For Oppenheimer & Co., Inc., successor to Fahnstock, successor to Josephthal, hereinafter referred to as "Respondent": Cory M. Sobel, Esq., Office of General Counsel, Josephthal & Co., Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: June 2, 2004.

Claimants signed the Uniform Submission Agreements: April 26 2004.

Motion to Dismiss and Statement of Answer filed by Respondent on or about: July 28, 2004.

Respondent signed the Uniform Submission Agreement: July 29, 2004.

Response to Respondent's Motion to Dismiss filed by Claimants on or about: August 31, 2004.

Motion to Strike Respondent's Answer, Motion for Sanctions, Motion for Default Judgment and Motion to Compel filed by Claimants on or about: March 11, 2005.

Response to Motion to Strike Respondent's Answer, Motion for Sanctions, Motion for Default Judgment and Motion to Compel filed by Respondent on or about: March 11, 2005.

[Second] Motion to Strike Respondent's Answer, Motion for Sanctions, Motion for Default Judgment and Motion to Compel filed by Claimants on or about: April 6, 2005.

Response to [Second] Motion to Strike Respondent's Answer, Motion for Sanctions, Motion for Default Judgment and Motion to Compel filed by Respondent on or about: April 8, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: violation of Sections 517.301 and 517.211 of the Florida Statutes; common law gross negligence, or, at a minimum, ordinary negligence and breach of contract; violations of NYSE Rule 405 and NASD Rule 2310; breach of fiduciary duty; failure to supervise; and, *respondeat superior*. The causes of action relate to the purchase in Claimants' accounts of various technology and dotcom stocks.

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

RELIEF REQUESTED

Claimants requested the following relief:

1. statutory rescission damages, exclusive of legal interest, in an amount in excess of \$128,267.98;
2. disgorgement of all commissions and fees paid, plus legal interest,
3. reimbursement of all commissions, fees, taxes and penalties paid or owing to other entities, plus legal interest;
4. other compensatory damages in an amount in excess of \$500.00, plus legal interest;
5. costs, expenses and disbursements in pursuing this arbitration proceeding;
6. full reimbursement of all filing and forum fees;
7. reasonable attorney's fees, with such amount to be determined by a court of competent jurisdiction in a confirmation proceeding following rendition of the Award by the Panel;
8. punitive damages up to treble the compensatory damages and in excess of \$370,000.00; and,
9. such further relief as is deemed just and proper by the Panel.

Respondent requested that the Statement of Claim in all respects be dismissed with prejudice, and that attorneys fees and disbursements be assessed against Claimants.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent filed a motion to dismiss in which Respondent asserted, among other things, that Claimants' Statement of Claim is factually untrue and must be dismissed because it fails to meet the minimum specificity standards. In their response, Claimants asserted that motions to dismiss are not authorized by the rules of arbitration. On or about October 4, 2005, the Panel issued an Order that denied Respondent's motion to dismiss.

Claimants filed a motion to strike Respondent's Answer, motion for sanctions, motion for default judgment and motion to compel in which Claimants asserted that Respondent refused to produce documents. In its response, Respondent asserted that Claimants failed to file a document request. On or about April 1, 2005, the Panel issued an Order that denied Claimants' motion to strike, motion for sanctions and motion for default judgment, and granted Claimants' motion to compel.

Claimants filed a second motion to strike Respondent's Answer, motion for sanctions, motion for default judgment and motion to compel in which Claimants asserted that Respondent failed to produce documents pursuant to the Panel's Order dated April 1, 2005. In its response, Respondent asserted that it produced all relevant documents that it was able to produce and that were in its possession. Following the evidentiary hearing, the Panel denied Claimants' motion.

The parties 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 post-hearing submissions (if any), the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants' claims are dismissed, with prejudice, in their entirety.

Any and all claims for relief not specifically addressed herein, including Claimants' claims for relief pursuant to Sections 517.301 and 517.211 of the Florida Statutes, Claimants' request for punitive damages and Claimants' request for attorney's fees, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 300.00
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Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Respondent is a member firm and a party.

Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$2,750.00</u>
Total Member Fees	= \$3,500.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

No adjournments were requested in this matter.

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.

No three-day cancellation fees were assessed in this matter.

Injunctive Relief Fees

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the Panel.

Injunctive relief fees were not assessed in this matter.

Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

Three (3) Pre-hearing sessions with the Panel @ \$1,125.00/session	= \$3,375.00
Pre-hearing conferences:	
August 30, 2004	1 session
October 4, 2004	1 session
April 1, 2005	1 session
Four (4) Hearing sessions @ \$1,125.00/session	= \$4,500.00
Hearing Dates:	
April 12, 2005	2 sessions
April 13, 2005	2 sessions

Total Forum Fees = \$7,875.00

The Panel has assessed the total forum fees of \$7,875.00 to Claimants, jointly and severally.

Administrative Costs

Administrative costs are expenses incurred due to a request by a party for special services beyond the normal administrative services. These include, but are not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

There were no administrative costs incurred in this matter.

Fee Summary

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$7,875.00
Total Fees	= \$8,175.00
Less Payments	= \$1,425.00
Balance Due NASD Dispute Resolution	= \$6,750.00

Respondent is solely liable for:

Member Fees	= \$ 3,500.00
Total Fees	= \$ 3,500.00
Less Payments	= \$ 3,500.00
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

Robert J. Buchner, Esq.	-	Public Arbitrator, Presiding Chairperson
Monica I. Salis, Esq.	-	Public Arbitrator
Michael Scott Hill	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

_____/s/
Robert J. Buchner, Esq.
Public Arbitrator, Presiding Chairperson

April 15, 2005
Signature Date

_____/s/
Monica I. Salis, Esq.
Public Arbitrator

April 15, 2005
Signature Date

NASD Dispute Resolution

Arbitration No. 04-04007

Award Page 5

/s/

Michael Scott Hill
Non-Public Arbitrator

April 15, 2005

Signature Date

April 19, 2005

Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution

Arbitration No. 04-04007

Award Page 4

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Monica I. Salis, Esq.	-	Public Arbitrator
Michael Scott Hill	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Robert J. Buchner, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

Monica I. Salis, Esq.
Public Arbitrator

Signature Date

4/15/05

APR. 15. 2005 9:54AM

NASD REGULATIONS

NO. 746

P. 5

NASD Dispute Resolution
Arbitration No. 04-04007
Award Page 4

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ARBITRATION PANEL

Robert J. Buchner, Esq.
 Monica I. Salis, Esq.
 Michael Scott Hill

Public Arbitrator, Presiding Chairperson
 Public Arbitrator
 Non-Public Arbitrator

Concurring Arbitrators' Signatures



Robert J. Buchner, Esq.
 Public Arbitrator, Presiding Chairperson

4/15/05
 Signature Date

Monica I. Salis, Esq.
 Public Arbitrator

Signature Date

APR. 14. 2005 5:40PM

NASD REGULATIONS

NO. 734

P. 6/6

NASD Dispute Resolution

Arbitration No. 04-04007

Award Page 5



Michael Scott Hill

Non-Public Arbitrator

4/15/05
Signature Date

Date of Service (For NASD Dispute Resolution office use only)