

Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Oppenheimer & Co. Inc., f/k/a Fahnestock & Co. Inc. (Claimant) v. Mitchell T. Toland
(Respondent)

Case Number: 04-04759

Hearing Site: New York, New York

Nature of the Dispute: Member v. Associated Person

REPRESENTATION OF PARTIES

Claimant Oppenheimer & Co. Inc., f/k/a Fahnestock & Co. Inc, hereinafter referred to as
"Claimant": Evelyn Bukchin, Esq., Oppenheimer & Co., Inc., New York, NY.

Respondent Mitchell T. Toland, hereinafter referred to as "Respondent" appeared *pro se*.

CASE INFORMATION

Statement of Claim filed on or about: July 1, 2004.

Claimant signed the Uniform Submission Agreement: July 1, 2004.

Statement of Answer filed by Respondent on or about: November 30, 2004.

Respondent did not sign the Uniform Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: breach of promissory note agreement.

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

RELIEF REQUESTED

Claimant requested compensatory damages in the amount of \$101,750.00; interest at nine
percent (9%) from January 10, 2003 through the date of payment in full; NASD filing fees in the
amount of \$3,825.00; and expenses, including estimated attorneys' fees, related to the cost of
collection in the amount of \$10,200.00.

Respondent requested that the Claimant's claims with respect to the first promissory note be dismissed.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent did not appear at the hearing.

Respondent did not file with NASD Dispute Resolution a properly executed Uniform Submission Agreement but is required to submit to arbitration pursuant to the Code and, having answered the claim, is bound by the determination of the Panel on all issues submitted.

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 for and shall pay Claimant compensatory damages in the amount of \$101,750.00 including nine percent (9%) interest accruing from January 10, 2003 until the date of payment.
2. Respondent is liable for and shall pay Claimant attorneys' fees of \$5,000.00 authorized by a contract between the parties.
3. Respondent is liable for and shall pay Claimant costs in the amount of \$4,575.00
4. 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
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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 that employed the associated person at the time of the events giving rise to the dispute. Accordingly, Oppenheimer & Co. Inc. is a party.

Member surcharge	= \$ 1,700.00
Pre-hearing process fee	= \$ 750.00
<u>Hearing process fee</u>	<u>= \$ 2,750.00</u>
Total Member Fees	= \$ 5,200.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

February 11, 2005, adjournment by Respondent = waived
June 14, 2005, adjournment by Respondent = waived

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:

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: July 20, 2005 1 session	
One (1) Pre-hearing session with Panel @ \$1,125.00	= \$ 1,125.00
Pre-hearing conference: November 16, 2004 1 session	
One (1) Hearing session @ \$1,125.00	= \$ 1,125.00
Hearing Date: August 25, 2005 1 session	
<hr/> Total Forum Fees	<hr/> = \$ 2,700.00

1. The Panel has assessed \$2,700.00 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
<hr/> Total Fees	<hr/> = \$ 6,200.00
Less payments	= \$ 7,325.00
Refund Due Claimant	= \$ 1,125.00

2. Respondent is solely liable for:

Forum Fees	= \$ 2,700.00
<hr/> Total Fees	<hr/> = \$ 2,700.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,700.00

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

ARBITRATION PANEL

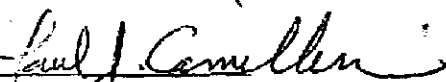
Ernest Edward Badway, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Paul J. Camilleri, Esq.	-	Non-Public Arbitrator
Richard D. Chusid, Esq.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

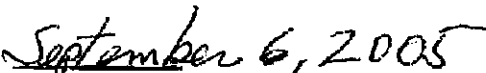
I, the undersigned arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this is which is my award.

Ernest Edward Badway, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date



Paul J. Camilleri, Esq.
Non-Public Arbitrator



Signature Date

Richard D. Chusid, Esq.
Non-Public Arbitrator

Signature Date



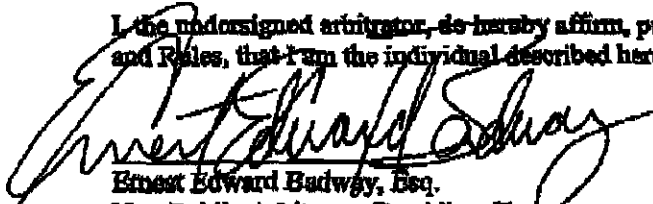
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Ernest Edward Badway, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Paul J. Camilleri, Esq.	-	Non-Public Arbitrator
Richard D. Chusid, 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 is which is my award.


Ernest Edward Badway, Esq.
Non-Public Arbitrator, Presiding Chairperson

August 26, 2006
Signature Date

Paul J. Camilleri, Esq.
Non-Public Arbitrator

Signature Date

Richard D. Chusid, Esq.
Non-Public Arbitrator

Signature Date

September 8, 2005
Date of Service (For NASD Dispute Resolution use only)

ARBITRATION PANEL

Ernest Edward Badway, Esq.	-	Non-Public Arbitrator, Presiding Chairperson
Paul J. Camilleri, Esq.	-	Non-Public Arbitrator
Richard D. Chusid, Esq.	-	Non-Public Arbitrator

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Ernest Edward Badway, Esq.
Non-Public Arbitrator, Presiding Chairperson

Signature Date

Paul J. Camilleri, Esq.
Non-Public Arbitrator

Signature Date


Richard D. Chusid, Esq.
Non-Public Arbitrator

Signature Date

September 8, 2005
Date of Service (For NASD Dispute Resolution use only)