

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Harry D. Wampler, Jr.

and

Case Number: 04-05439
Hearing Site: Louisville, Kentucky

Names of Respondents

UBS Financial Services, Inc.
f/k/a PaineWebber Inc.,
Oppenheimer & Co., Inc.
f/k/a Fahnestock & Co., Inc.,
Sands Brothers & Co., Ltd.,
James Yong Song, and
Johnson Vinh Ngo

NATURE OF DISPUTE

Customer v. Members and Associated Persons

REPRESENTATION OF PARTIES

Harry D. Wampler, Jr. ("Wampler" or "Claimant") was represented by James P. McCrocklin, Esq., Louisville, Kentucky.

UBS Financial Services, Inc., f/k/a PaineWebber Inc. ("UBS") was represented by Dan A. Rosenbaum, Esq., UBS Financial Services, Inc., New York, New York.

Oppenheimer & Co., Inc. f/k/a Fahnestock & Co., Inc. ("Oppenheimer") and Johnson Vinh Ngo ("Ngo") were represented by Eric Shames, Esq., Oppenheimer & Co., Inc., New York, New York.

Sands Brothers & Co., Ltd. ("Sands Brothers") did not make an appearance in this matter.

CASE INFORMATION

The Statement of Claim was filed on or about July 30, 2004. The Submission Agreement of Claimant was signed on or about July 27, 2004.

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A Statement of Answer was filed by UBS on or about November 16, 2004. The Submission Agreement of UBS was signed on or about October 6, 2004.

A Statement of Answer and Motion to Dismiss was filed by Oppenheimer on or about November 3, 2004. The Submission Agreement of Oppenheimer was signed on or about August 8, 2004.

Claimant's Response to Oppenheimer's Motion to Dismiss was filed on or about November 17, 2004.

Sands Brothers & Co., Ltd. did not file an Answer or a Submission Agreement.

James Young Song did not file an Answer or a Submission Agreement.

Johnson Vinh Ngo did not file an Answer or a Submission Agreement.

CASE SUMMARY

Claimant asserted the following causes of action: unsuitable recommendations; misrepresentation; omission of material facts; failure to reasonably supervise; breach of fiduciary duty; breach of contract; fraud; negligence; principal/agent liability; and control person liability. The causes of action related to the recommendation and purchases of various unspecified securities investments. Claimant alleged the Respondents failed to meet his investment objectives by adopting an overly aggressive and speculative trading strategy that led to substantial losses in his account.

Unless specifically admitted in its Answer, Respondent Oppenheimer denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim is barred by the doctrine of ratification; Claimant's causes of action are barred by the doctrines of laches, waiver, and estoppel; Claimant's alleged losses were not proximately caused by any action or inaction of Respondent; Claimant had the opportunity and means to mitigate his purported damages, but failed to do so; and Claimant did not reasonably rely to his detriment upon any representation or action of Respondent.

Unless specifically admitted in its Answer, Respondent UBS denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim should be dismissed as to UBS because UBS handled Claimant's account properly, in good faith, in a commercially reasonable manner, and in accordance with the highest standards in the securities industry; the Statement of Claim should be dismissed because Respondent did not proximately cause Claimant's alleged damages, if any; and the Statement of Claim should be dismissed as to UBS because Claimant's alleged damages, if any, were caused entirely by market forces outside the control of UBS.

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RELIEF REQUESTED

Claimant requested an award in the amount of \$190,236.69 in compensatory damages, interest, costs and attorneys' fees and other relief as the panel deemed just and proper.

Respondent Oppenheimer requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and other relief as the panel deemed appropriate.

Respondent UBS requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and other relief as the panel deemed just and proper.

OTHER ISSUES CONSIDERED & DECIDED

Upon review of the file and the representations made by/on behalf of the Claimant, the undersigned arbitrators have determined that Respondent Sands Brothers has been properly served with the Statement of Claim pursuant to Rule 10302 and Rule 10314 of the NASD Code of Arbitration Procedure (the "Code"). The undersigned arbitrators have also determined that Respondent Sands Brothers had received due notice of the hearing as required under Rule 10315 of the Code and that arbitration of the matter would proceed pursuant to Rule 10318 of the Code.

Respondent Sands Brothers did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and is bound by the determination of the arbitration panel on all issues submitted.

Respondent Ngo did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having appeared at the hearing, is bound by the determination of the arbitration panel on all issues submitted.

On or about October 16, 2005, Claimant voluntarily dismissed Respondents, Sands Brothers & Co., Ltd. and UBS Financial Services, Inc., from this proceeding with prejudice.

At the conclusion of the hearing, Respondent Ngo requested that the panel enter an order directing NASD to expunge all references to this matter from his CRD records.

At the conclusion of the hearing, Claimant dismissed Respondent Ngo from this proceeding with prejudice.

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The panel was dismayed by the obstreperous behavior of Respondents' counsel at the hearing. The panel felt that counsel's behavior at the hearing served to prolong the proceedings. The panel further notes that counsel for the Respondent was repeatedly disrespectful toward the Chairperson by consistently arguing with her as if she were opposing counsel, while also making sarcastic, flippant remarks regarding the Chairperson's rulings. The panel cautions Respondent's counsel not to repeat this behavior in future arbitrations. As a result of counsel's actions at the hearing, the panel assesses 100% of the forum fees stemming from the hearing against Respondent Oppenheimer.

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) Respondent, Oppenheimer & Co., Inc. f/k/a Fahnstock & Co., Inc., is liable for and shall pay to Claimant, Harry D. Wampler, Jr., the sum of \$28,000.00 in compensatory damages;
- 2) Respondent, Oppenheimer & Co., Inc. f/k/a Fahnstock & Co., Inc., is liable for and shall pay to Claimant, Harry D. Wampler, Jr., interest at the rate of 12% per annum on the above-stated sum commencing on the service date of this award and until it is paid in full;
- 3) Respondent, Oppenheimer & Co., Inc. f/k/a Fahnstock & Co., Inc., is liable for and shall pay to Claimant, Harry D. Wampler, Jr., the sum of \$8,400.00 in attorneys fees pursuant to KRS 292.480(c);
- 4) The Panel recommends the expungement of all reference to the above captioned arbitration from Respondent, Johnson Vinh Ngo's, registration records maintained by the Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 04-16, Respondent, Johnson Vinh Ngo, must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by the NASD, parties seeking judicial confirmation of an arbitration award containing

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expungement relief must name NASD as an additional party and serve NASD with all appropriate documents.

Pursuant to Rule 2130, the arbitration panel has made the following affirmative findings of fact:

The claim, allegation, or information is false;

- 5) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 6) Any relief not specifically enumerated is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fee for each claim:

Initial claim filing fee = \$300.00

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 persons at the time of the events giving rise to the dispute. In this matter, the member firms are UBS Financial Services, Inc., Oppenheimer & Co., Inc. f/k/a Fahnestock & Co., Inc., and Sands Brothers & Co., Ltd.

Member surcharge	= \$1,700.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,750.00

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 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 session with Panel x \$1,125.00	= \$1,125.00
Pre-hearing conference: February 8, 2005 1 session	

Two (2) Hearing sessions x \$1,125.00	= \$2,250.00
Hearing Dates: October 18, 2005 2 sessions	

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Total Forum Fees = \$3,375.00

The Arbitration Panel has assessed \$3,375.00 of the forum fees to Oppenheimer & Co., Inc. f/k/a Fahnestock & Co., Inc., Inc.

Fee Summary

Claimant, Harry D. Wampler, Jr., is liable for:

<u>Initial Filing Fee</u>	= \$ 300.00
<u>Total Fees</u>	= \$ 300.00
<u>Less payments</u>	= \$1,425.00
<u>Refund due to Claimant</u>	= \$1,125.00

Respondent, UBS Financial Services, Inc., is liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Total Fees</u>	= \$5,200.00
<u>Less payments</u>	= \$5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$ 0.00

Respondent, Oppenheimer & Co., Inc. f/k/a Fahnestock & Co., Inc., is liable for:

<u>Member Fees</u>	= \$5,200.00
<u>Forum Fees</u>	= \$3,375.00
<u>Total Fees</u>	= \$8,575.00
<u>Less payments</u>	= \$5,200.00
<u>Balance Due NASD Dispute Resolution</u>	= \$3,375.00

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

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ARBITRATION PANEL

Valerie J. Hamm, Esq. - Public Arbitrator, Presiding Chair
R. Van Young, Esq. - Public Arbitrator
Coleman Robert Perry, Jr., CFP - Non-Public Arbitrator

Concurring Arbitrators:

/s/ R. Van Young, Esq.
R. Van Young, Esq.
Public Arbitrator

11/07/05
Signature Date

/s/ Coleman Robert Perry, Jr., CFP
Coleman Robert Perry, Jr., CFP
Non-Public Arbitrator

11/04/05
Signature Date

Dissenting Arbitrator:

I dissent as to liability. I find for Respondent Oppenheimer & Co., Inc. as to all claims. I concur with the panel on all other issues.

/s/ Valerie J. Hamm, Esq.
Valerie J. Hamm, Esq.
Public Arbitrator, Presiding Chair

10/31/05
Signature Date

11/7/05
Date of Service (For NASD office use only)