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

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In the Matter of the Arbitration Between:

Names of the Claimants

Wilda Colon  
David Colon

Case Number: 04-07373

Names of the Respondents

Oppenheimer & Co., Inc. (fka Prime Charter Ltd.  
and Fahnstock & Co.)  
Meyers Associates, LP

Hearing Site: Boca Raton, Florida

Name of Third Party Respondent

Diego Carmona

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Nature of the Dispute: Customer vs. Member vs. Associated Person.

**REPRESENTATION OF PARTIES**

For Wilda Colon and David Colon, hereinafter referred to as "Claimants": Jeffrey R. Sonn, Esq. and Jeffrey Erez, Esq., Sonn & Erez, Fort Lauderdale, Florida.

For Respondent Oppenheimer & Co., Inc. (fka Prime Charter Ltd. And Fahnstock & Co.) ("Oppenheimer"): Cory Zadanosky, Esq., Boose Casey Ciklin Lubitz Martens McBane & O'Connell, West Palm Beach, Florida.

For Respondent Meyers Associates, LP ("Meyers"): David Schrader, Esq, Schrader & Schoenberg, New York, New York.

Third Party Respondent Diego Carmona ("Carmona"), did not appear.

**CASE INFORMATION**

Statement of Claim filed on or about: October 14, 2004.

Claimants signed, but did not date, the Uniform Submission Agreement.

Statement of Answer, Motion to Dismiss or, in the alternative, Motion for a More Definite Statement of Claim filed by Respondent Oppenheimer on or about: December 21, 2004.

Statement of Answer, Counterclaim and Third Party Claim filed by Respondent Meyers on or about: January 18, 2005.

Respondents Oppenheimer and Meyers did not file a signed Uniform Submission Agreement.

Third Party Respondent Carmona did not file a Statement of Answer or a signed Uniform Submission Agreement.

Claimants did not file a Statement of Answer to the Counterclaim.

Response to Motion to Dismiss and Motion for a More Definite Statement of Claim filed by Claimants on or about: January 31, 2005.

Motion for Default Award filed by Respondent Meyers on or about: July 26, 2005.

Motion for Sanctions filed by Claimants on or about: January 20, 2006.

Response to Motion for Sanctions filed by Respondent Oppenheimer on or about: January 23, 2006.

"Renewed" Motion for Default Judgment filed by Respondent Meyers on or about: February 9, 2006.

### **CASE SUMMARY**

Claimants asserted the following causes of action: 1) breach of fiduciary duty; 2) breach of contract; 3) negligence; 4) negligent hiring and supervision; 5) unsuitability; 6) intentional infliction of emotional stress; 7) common law fraud; 8) negligent misrepresentation; 9) unauthorized trading; and, 10) gross negligence. The causes of action relate to the purchase of various stocks including, but not limited to, Altera Corp., Amazon.com, Ariba, Inc., RealNetworks Inc., Sycamore Networks, Rambus, Inc., Sun Microsystems, Inc and Triquint Semiconductor, plus the use of unspecified option trading in Claimants' accounts.

Unless specifically admitted in its Answer, Respondent Oppenheimer denied the allegations made in the Statement of Claim and asserted various affirmative defenses. Respondent Oppenheimer filed a Motion to Dismiss the Statement of Claim based on it being factually deficient.

Unless specifically admitted in its Answer, Respondent Meyers denied the allegations made in the Statement of Claim and asserted various affirmative defenses. In addition, Respondent Meyers filed a Counterclaim and Third Party Claim. Respondent asserted that Claimants and Third Party Respondent are acting in concert in an attempt to defraud Respondent.

### **RELIEF REQUESTED**

Claimants requested compensatory damages in the amount of not more than \$500,000.00, rescission, statutory interest, costs and expert witness fee, punitive damages and such other relief as this Panel deemed equitable and proper.

Respondent Oppenheimer requested that the Statement of Claim be dismissed in its entirety, with prejudice, or an Order for a More Definite Statement of Claim and an award of attorney's fees and disbursements.

Respondent Meyers requested that the Statement of Claim be dismissed in its entirety and an award of NASD fees, legal expenses, costs, fees and such other and further relief as this Panel deemed just and proper. In addition, said Respondent filed a Counterclaim for costs and punitive damages and filed a Third Party Claim, wherein they requested indemnity and contribution and an award of NASD fees, legal expenses, costs, fees and such other and further relief as this Panel deemed just and proper.

**OTHER ISSUES CONSIDERED AND DECIDED**

Respondents and Third Party Respondent did not file with NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure (the "Code") and, as to Respondents Oppenheimer and Meyers, having answered the claim, are bound by the determination of the Panel on all issues submitted.

Upon review of the file and the representations made by/on behalf of the Third Party Claimant, the Panel determined that Third Party Respondent Carmona has been properly served with the Third Party Claim and received the notice of the telephonic hearing, and that arbitration of this matter would proceed without said Third Party Respondent present, in accordance with the Code.

On or about March 8, 2005, the Panel issued an Order that denied Respondent Oppenheimer's Motion to Dismiss, or in the alternative, Motion for a More Definite Statement of Claim.

Respondent Meyers requested that its Motion for Default Judgment be held in abeyance until the conclusion of the final hearings.

On February 7, 2006, Claimants advised NASD Dispute Resolution that they had settled their claims against the Respondents.

Claimants' Motion for Sanctions was not ruled on and deemed moot by the Panel pursuant to the settlement of this matter.

Respondent Meyers filed its "Renewed" Motion for Default Judgment against Third Party Respondent Carmona, with a request that the matter be determined by telephonic hearing or decided on the paper record.

On February 10, 2006, the Panel issued an Order stating that they would address Respondent Meyer's Motion for Default Judgment at a telephonic hearing. Pursuant to this Order a telephonic hearing was scheduled to address the Motion for Default Judgment. At this hearing, the Panel requested additional documentation from Respondent Meyers. After considering the Panel's request, Respondent Meyers determined that they would not pursue the Motion for Default Judgment.

On or about April 26, 2006, the Panel issued an Order that dismissed Third Party Respondent Carmona from this matter, with prejudice.

On May 15, 2006, Respondent Meyers notified NASD Dispute Resolution that its counterclaim against Claimants is dismissed, as part of the settlement agreement with the Claimants.

The parties have agreed that the Award in this matter may be entered in counterpart copies or that a signed handwritten Award may be entered.

### **AWARD**

After considering the pleadings, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimants and Respondents Oppenheimer and Meyers have resolved this matter between them and have dismissed this matter as to each other.

On or about April 25, 2006, the Panel issued an Order that dismissed Third Party Respondent Carmona from this matter, with prejudice.

The Panel made no further determinations as to the resolution of the claims in this matter.

### **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	= \$ 300.00
Third party/counterclaim filing fee	= \$1,000.00

#### **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, Respondent Oppenheimer is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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

Respondent Meyers is a party to this dispute and was a member of NASD at the time the following fees were assessed:

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**

No requests for adjournments were filed 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 cancellation fees were assessed in this matter.

### **Injunctive Relief Fees**

No injunctive relief fees were incurred during this proceeding.

### **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:

Three (3) Decisions on discovery-related motions on the papers	= \$ 600.00
with (1) one Arbitrator @ \$200.00	
Claimant submitted (2) two discovery-related motions	
Respondent Oppenheimer submitted (1) one discovery-related motion	

One (1) Pre-hearing session with a single arbitrator @ \$450.00	= \$ 450.00
Pre-hearing conference: August 8, 2005 1 session	

Two (2) Pre-hearing sessions with the Panel @ \$1,125.00	= \$2,250.00
Pre-hearing conferences: March 8, 2005 1 session	
February 22, 2006 1 session	

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Total Forum Fees	= \$3,300.00
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The Panel has assessed \$1,750.00 of the forum fees jointly and severally to Claimants.

The Panel has assessed \$1,550.00 of the forum fees to Respondent Meyers.

### **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 not limited to, additional copies of arbitrator awards, copies of audio transcripts, retrieval of documents from archives, interpreters, and security.

No administrative costs were incurred during this proceeding.

### **Fee Summary**

Claimants are jointly and severally liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 1,750.00
Total Fees	= \$ 2,050.00
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 625.00

Respondent Oppenheimer is solely liable for:

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

Respondent Meyers is solely liable for:

Third Party Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 1,550.00
<u>Total Fees</u>	= \$ 7,750.00
<u>Less payments</u>	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$ 425.00

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

**ARBITRATION PANEL**

<i>Allen J. Kaplan, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Francisco E. San Miguel, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Robert S. Natiss</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

/s/  
Allen J. Kaplan, Esq.  
Public Arbitrator, Presiding Chairperson

05/16/06  
Signature Date

/s/  
Francisco E. San Miguel, Esq.  
Public Arbitrator

05/17/06  
Signature Date

/s/  
Robert S. Natiss  
Non-Public Arbitrator

05/17/06  
Signature Date

05/17/06  
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution  
Arbitration No 04-07373  
Award Page 6

Respondent Oppenheimer is solely liable for:

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

Respondent Meyers is solely liable for:

Third Party Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,550.00
Total Fees	= \$ 7,750.00
Less payments	= \$ 7,325.00
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Francisco E. San Miguel, Esq.	-	Public Arbitrator
Robert S. Natiss	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**



Allen J. Kaplan, Esq.  
Public Arbitrator, Presiding Chairperson

5/16/06  
Signature Date

Francisco E. San Miguel, Esq.  
Public Arbitrator

Signature Date

Robert S. Natiss  
Non Public Arbitrator

Signature Date

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

May. 16. 2006 12:53PM

No. 2587 P. 1/7

**NASD Dispute Resolution**  
**Arbitration No. 04-07373**  
**Award Page 6**

**Respondent Oppenheimer is solely liable for:**

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

**Respondent Meyers is solely liable for:**

<u>Thrd Party Claim Filing Fee</u>	<u>= \$ 1,000.00</u>
<u>Member Fees</u>	<u>= \$ 5,200.00</u>
<u>Forum Fees</u>	<u>= \$ 1,550.00</u>
<u>Total Fees</u>	<u>= \$ 7,750.00</u>
<u>Less payments</u>	<u>= \$ 7,325.00</u>
<u>Balance Due NASD Dispute Resolution</u>	<u>= \$ 425.00</u>

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

**ARBITRATION PANEL**

<i>Allen J. Kaplan, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>Francisco E. San Miguel, Esq.</i>	-	<i>Public Arbitrator</i>
<i>Robert S. Natiss</i>	-	<i>Non-Public Arbitrator</i>

**Concurring Arbitrators' Signatures**

Allen J. Kaplan, Esq.  
 Public Arbitrator, Presiding Chairperson

Signature Date

  
Francisco E. San Miguel, Esq.  
 Public Arbitrator

5/17/2006  
Signature Date

Robert S. Natiss  
 Non-Public Arbitrator

Signature Date

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



May. 16. 2006 12:51PM

No. 2585 P. 7

NASD Dispute Resolution

Arbitration No. 04-07373

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Respondent Oppenheimer is solely liable for:

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

Respondent Meyers is solely liable for:

Third Party Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,550.00
Total Fees	= \$ 7,750.00
Less payments	= \$ 7,325.00
Balance Due NASD Dispute Resolution	= \$ 425.00

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

ARBITRATION PANEL

Allen J. Kaplan, Esq.	-	Public Arbitrator, Presiding Chairperson
Francisco E. San Miguel, Esq.	-	Public Arbitrator
Robert S. Natiss	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Allen J. Kaplan, Esq.  
Public Arbitrator, Presiding Chairperson

Signature Date

Francisco E. San Miguel, Esq.  
Public Arbitrator

Signature Date



Robert S. Natiss  
Non-Public Arbitrator

5-17-06  
Signature Date

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