

**AWARD**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between

Claimant

Ruth Bicoll

v.

Case Number: 04-07777  
Hearing Site: Southfield, Michigan

Respondents

Leonard & Company, First of Michigan  
Corporation, Fahnestock & Co., Inc.,  
Oppenheimer & Co., Inc., and  
David Locklear

And

Cross-Claimant

Leonard & Company

v.

Cross-Respondents

First of Michigan Corporation,  
Fahnestock & Co, Inc., Oppenheimer  
& Co., Inc., and David Locklear

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**NATURE OF DISPUTE**

Customer v. Members and Associated Person  
Member v. Members and Associated Person

**REPRESENTATION OF PARTIES**

Ruth Bicoll ("Claimant") was represented by Anthony V. Trogan, Esq., and Lysa Postula-Stein, Esq., Law Offices of Anthony V. Trogan, P.L.L.C., West Bloomfield, Michigan.

Leonard & Company ("Leonard") was represented by Sean M. Walsh, Esq., Cox, Hodgman & Giarmarco, P.C., Troy, Michigan.

First of Michigan Corporation ("FOMC"), Fahnestock & Co., Inc. ("Fahnestock") and Oppenheimer & Co., Inc. ("Oppenheimer & Co."), collectively referred as "Oppenheimer," were represented by Mark L. Kowalsky, Esq., and Brian Witus, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

Respondent David Locklear ("Locklear") appeared in pro per.

### **CASE INFORMATION**

The Statement of Claim was filed on or about October 19, 2004. The Submission Agreement of Claimant was signed on or about October 19, 2004.

The Motion to Dismiss and Statement of Answer of Leonard was filed on or about January 6, 2005. Leonard's Cross-Claim was filed on or about January 6, 2005. The Submission Agreement of Leonard was signed on or about December 15, 2004.

The Statement of Answer of FOMC, Fahnestock and Oppenheimer was filed jointly on or about August 22, 2005.

The Statement of Answer of Locklear was filed on or about January 13, 2005. The Submission agreement of Locklear was signed on or about February 10, 2005.

Claimant's Response to the Motion to Dismiss filed by Leonard was filed on or about February 14, 2005.

Leonard filed a Motion to Bar Presentation of Any Matter, Argument or Defenses by Cross-Respondents on or about August 22, 2005.

### **CASE SUMMARY**

Claimant asserted the following legal theories in support of her claims: breach of contract; common law fraud; conspiracy; promissory estoppel; negligence; malpractice; breach of fiduciary duty; breach of Michigan securities laws and churning. The causes of action related to Claimant's allegations that she purchased securities including Steeple Dist. and Tiding Inc. based upon Locklear's recommendations, and that the purchase of these investments was fraudulent. Claimant also asserted that her portfolio was concentrated in speculative, aggressive and "high-tech" equities which were not suitable for her investment goals.

Unless specifically admitted in his Answer, Locklear denied the allegations in the Statement of Claim and asserted that the market was responsible for any losses claimed.

Unless specifically admitted in its Answer, Leonard denied the allegations made in the

Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim fails to allege respondeat superior liability; fails to allege control person liability; fails to allege any failure to supervise; Claimant has no private right to enforce NASD rules; Claimant fails to allege breach of contract; and Claimant fails to state cognizable claims under the Michigan Uniform Securities Act.

Unless specifically admitted in its Answer, Oppenheimer denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant is estopped from asserting the claim set forth in the Statement of Claim; Oppenheimer's actions are not the proximate cause of Claimant's alleged damages; Claimant's claims are barred by the "Bespeaks Caution Doctrine"; Oppenheimer did not act with any intent to defraud Claimant; Claimant cannot establish transaction causation or loss causation; and Claimant failed to mitigate her damages.

Leonard asserted a Cross-Claim against Oppenheimer and Locklear for breach of contract, indemnification, negligence, fraud, and misrepresentation.

#### **RELIEF REQUESTED**

Claimant requested an award in the amount of \$389,639.00, plus interest, costs, attorneys' fees, rescission, exemplary and punitive damages, additional or alternative damages and any other relief the Panel deemed appropriate.

Leonard requested that the claims asserted against it be dismissed. In its Cross Claim, Leonard requested an award for any amount imposed against Leonard plus costs, attorney's fees and expenses.

Oppenheimer requested that the claims asserted against it, both by the Claimant and Cross-Claimant be dismissed with prejudice.

Locklear requested that the claims asserted against him be dismissed.

#### **OTHER ISSUES CONSIDERED & DECIDED**

Respondents First of Michigan Corp., Fahnestock & Co. Inc., Oppenheimer & Co. Inc., and Leonard & Company did not file with the NASD Dispute Resolution properly executed submissions to arbitration but are required to submit to arbitration pursuant to Rule 10301 of the NASD Code of Arbitration Procedure (the "Code") and having answered the claim, and appeared and testified at the hearing through counsel, are bound by the determination of the arbitration panel on all issues submitted.

Leonard withdrew its Motion to Bar Presentation of Any Matter, Argument or Defenses by Cross-Respondents on or about August 29, 2005.

On or about October 10, 2005, Claimant settled her claims against Leonard & Company and Leonard & Company withdrew its Cross-Claims with prejudice.

At the hearing on January 9, 2006, Claimant advised the panel that she had settled her claims against First of Michigan Corp., Oppenheimer & Co., Inc., and Fahnstock & Co., Inc.

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 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, David Locklear, is liable for and shall pay to Claimant, Ruth Bicoll, the sum of \$15,000.00 in 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 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	= \$ 300.00
Cross-claim 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 firms that employed the associated person at the time of the events giving rise to the dispute. In this matter, the member firms are Leonard & Company, First of Michigan Corp., Fahnstock & Co., Inc., and Oppenheimer & Co. Inc.

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

### **Adjournment Fees**

Adjournments requested during these proceedings:

October 19-21, 2005, adjournment requested by Respondents	= \$ 1,125.00
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### **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:

At hearing on October 18, 2005, Respondents requested that the remaining hearing dates of October 19-21, 2005 be adjourned	= \$ 300.00
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### **Forum Fees and Assessments**

The Arbitration Panel has assessed forum fees for each hearing session conducted and each decision rendered on a discovery-related motion on the papers. 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:

Two (2) Pre-hearing sessions with a single arbitrator x \$450.00	= \$ 900.00
Pre-hearing conferences: September 13, 2005	1 session
September 20, 2005	1 session

One (1) Pre-hearing session with Arbitrators x \$1,125.00	= \$ 1,125.00
Pre-hearing conference: March 28, 2005	1 session

Three (3) Hearing sessions x \$1,125.00	= \$ 3,375.00
Hearing Dates: October 18, 2005	2 sessions
January 9, 2006	1 session

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Total Forum Fees	= \$ 5,400.00
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The Arbitration Panel has assessed \$2,175.00 of the forum fees to Ruth Bicoll.

The Arbitration Panel has assessed \$2,175.00 of the forum fees to First of Michigan Corporation, Fahnestock & Co, Inc., and Oppenheimer & Co., Inc.

The Arbitration Panel has assessed \$1,050.00 of the forum fees to Leonard & Company.

**Fee Summary**

Claimant, Ruth Bicoll, is liable for:

Initial Filing Fee	= \$ 300.00
Adjournment Fees	= \$ 562.50
Three-Day Cancellation Fee	= \$ 150.00
Forum Fees	= \$ 2,175.00
Total Fees	= \$ 3,187.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 1,762.50

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

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

Respondents, Oppenheimer & Co. Inc., First of Michigan Corp., and Fahnestock & Co. Inc., are jointly and severally liable for:

Forum Fees	= \$ 2,175.00
Total Fees	= \$ 2,175.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 2,175.00

Respondent, Leonard & Company, is liable for:

Cross-Claim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,050.00
Total Fees	= \$ 7,250.00
Less payments	= \$ 7,450.00
Balance Refunded by NASD Dispute Resolution	= \$ 200.00

Respondents, Oppenheimer & Co. Inc., First of Michigan Corp., Fahnestock & Co. Inc., and David Locklear, are jointly and severally liable for:

Three-Day Cancellation Fee	= \$ 150.00
Adjournment Fee	= \$ 562.50
Total Fees	= \$ 712.50
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 712.50

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

**ARBITRATORS**

John F. Burns, Esq. - Public Arbitrator, Presiding Chair  
John J. Hasluck, Esq. - Public Arbitrator  
John R. Main - Non-Public Arbitrator

Concurring Arbitrators:

/s/ John F. Burns, Esq.  
John F. Burns, Esq.  
Public Arbitrator, Presiding Chair

01/10/06  
Signature Date

/s/ John J. Hasluck, Esq.  
John J. Hasluck, Esq.  
Public Arbitrator

01/10/06  
Signature Date

/s/ John R. Main  
John R. Main  
Non-Public Arbitrator

01/10/06  
Signature Date

01/10/06  
Date of Service (For NASD office use only)

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John R. Main - Non-Public Arbitrator

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John J. Hasluck, Esq.  
Public Arbitrator

7/10/06  
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Public Arbitrator, Presiding Chair

Jan 10 '06  
Signature Date

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John J. Hasluck, Esq.  
Public Arbitrator

Signature Date

John R. Main  
John R. Main  
Non-Public Arbitrator

Signature Date

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