

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

---

In the Matter of the Arbitration Between:

Irving H. Boim & Lawrence Jempolsky Trustees of Max & Gussie Boim LIU Tr. DTD 9/10/93  
FBO Irving H. Boim (Claimant) vs. Fahnestock & Co., Inc. n/k/a Oppenheimer & Co., Inc.  
(Respondent)

Case Number: 05-01315

Hearing Site: New York, New York

---

Nature of the Dispute: Customer vs. Member

**REPRESENTATION OF PARTIES**

Claimant Irving H. Boim & Lawrence Jempolsky Trustees of Max & Gussie Boim LIU Tr. DTD 9/10/93 FBO Irving H. Boim, hereinafter referred to as "Claimant": Randell C. Place, Esq., Blum Silver & Schwartz LLP, Coral Springs, FL.

Respondent Fahnestock & Co., Inc. n/k/a Oppenheimer & Co., Inc. ("Oppenheimer") hereinafter referred to as "Respondent": Edward J. Boyle, Esq., Wilson, Elser, Moskowitz, Edelman & Dicker LLP, New York, NY. Previously represented by Yosef Sinensky, Esq., Oppenheimer & Co., Inc., New York, NY.

**CASE INFORMATION**

Statement of Claim filed on or about: March 8, 2005.

Claimant signed the Uniform Submission Agreement: February 16, 2005.

Statement of Answer filed by Respondent on or about: June 30, 2005.

Respondent signed the Uniform Submission Agreement: June 30, 2005.

**CASE SUMMARY**

Claimant asserted the following causes of action: breach of contract, suitability, churning, failure to supervise, common law fraud, negligence, and breach of fiduciary duty. The causes of action relate to unspecified securities.

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 \$189,000.00, rescission of all excessive commissions, interest at the legal rate from the date of purchase or reasonable market

return, punitive damages, the costs of this proceeding, and for such other relief as is just and proper.

Respondent requested that the Statement of Claim be dismissed in its entirety, and all costs, attorneys' fee and disbursement be assessed against Claimants.

### **OTHER ISSUES CONSIDERED AND DECIDED**

At the hearings, Respondent made a Motion to Dismiss Claimant's claim of churning. After due deliberation, the Panel denied said Motion.

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. Claimant's claim for failure to supervise is granted insofar as the period July 14, 2003 until the account was closed is concerned. However, the Panel determined that Claimant suffered no loss and therefore did not award any monetary damages. Claimant's remaining claims are dismissed in their entirety.
2. Respondent Oppenheimer is liable for and shall pay to Claimant \$300.00 to reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.
3. Any and all relief not specifically addressed herein, including punitive damages, 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	= \$ 300.00
--------------------------	-------------

#### **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, Oppenheimer & Co., Inc. is a party.

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

**Forum Fees and Assessments**

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

One (1) Decision on discovery-related motions on the papers  
with (1) one arbitrator @ \$200.00 = \$ 200.00  
Claimant submitted (1) discovery-related motion

Two (2) Pre-hearing sessions with Panel @ \$1,125.00 = \$ 2,250.00  
Pre-hearing conferences: August 8, 2005 1 session  
February 3, 2006 1 session

Four (4) Hearing sessions @ \$1,125.00 = \$ 4,500.00  
Hearing Dates: February 6, 2006 2 sessions  
February 7, 2006 2 sessions

---

Total Forum Fees = \$ 6,950.00

1. The Panel has assessed \$6,950.00 of the forum fees to Respondent.

**Fee Summary**

1. Claimant is liable for:

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

*As stated in the "Award" section above, Respondent shall reimburse Claimant for the filing fee previously paid to NASD Dispute Resolution.*

2. Respondent is solely liable for:

Member Fees	= \$ 5,200.00
<u>Forum Fees</u>	= \$ 6,950.00
<u>Total Fees</u>	= \$12,150.00
<u>Less payments</u>	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 6,950.00

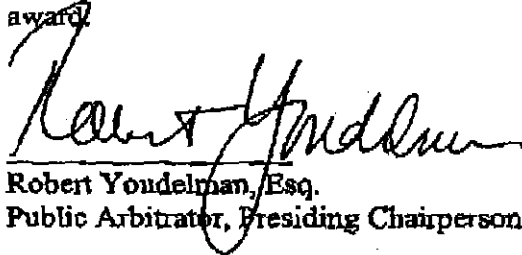
All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

ARBITRATION PANEL

Robert Yondelman, Esq.	-	Public Arbitrator, Presiding Chairperson
Bennett A. Hall	-	Public Arbitrator
Joseph M. Buffone, 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, which is my award.

  
Robert Yondelman, Esq.  
Public Arbitrator, Presiding Chairperson

2/15/06  
Signature Date

\_\_\_\_\_  
Bennett A. Hall  
Public Arbitrator

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Joseph M. Buffone, Esq.  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

February 21, 2006  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Robert Youdelman, Esq.  
Bennett A. Hall  
Joseph M. Buffone, Esq.

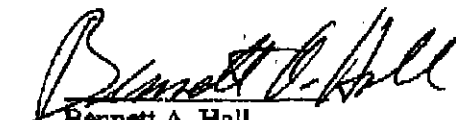
- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator  
- Non-Public Arbitrator

**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, which is my award.

\_\_\_\_\_  
Robert Youdelman, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

  
Bennett A. Hall  
Public Arbitrator

2-17-06  
Signature Date

\_\_\_\_\_  
Joseph M. Buffone, Esq.  
Non-Public Arbitrator

\_\_\_\_\_  
Signature Date

February 21, 2006  
Date of Service (For NASD Dispute Resolution use only)

**ARBITRATION PANEL**

Robert Youdelman, Esq.	-	Public Arbitrator, Presiding Chairperson
Bennett A. Hall	-	Public Arbitrator
Joseph M. Buffone, Esq.	-	Non-Public Arbitrator

**Concurring Arbitrators' Signatures**

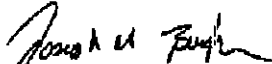
I, the undersigned Arbitrator, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this, which is my award.

\_\_\_\_\_  
Robert Youdelman, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Bennett A. Hall  
Public Arbitrator

\_\_\_\_\_  
Signature Date

  
\_\_\_\_\_  
Joseph M. Buffone, Esq.  
Non-Public Arbitrator

2-17-06  
\_\_\_\_\_  
Signature Date

February 21, 2006  
\_\_\_\_\_  
Date of Service (For NASD Dispute Resolution use only)