

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

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In the Matter of the Arbitration Between

Claimant

The Linda M. Palmer Trust U/D/A 12/12/91

and

Case Number: 05-02366  
Hearing Site: Southfield, Michigan

Respondents

Fifth Third Securities, Inc.,  
Oppenheimer & Co., Inc., and  
Charles Beer

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**NATURE OF DISPUTE**

Customer v. Members and Associated Person

**REPRESENTATION OF PARTIES**

The Linda M. Palmer Trust U/D/A 12/12/91 ("Claimant") was represented by Michael P. Marsalese, Esq., Marsalese Law Group, PLLC, Southfield, Michigan.

Fifth Third Securities, Inc. ("Fifth Third") was represented by Brian J. Masternak, Esq., Warner Norcross & Judd LLP, Grand Rapids, Michigan.

Oppenheimer & Co., Inc. ("Oppenheimer") and Charles Beer ("Beer") were represented by Brian Witus, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan.

**CASE INFORMATION**

The Statement of Claim was filed on or about May 4, 2005. The Submission Agreement of The Linda M. Palmer Trust U/D/A 12/12/91 was signed on or about April 28, 2005, by Linda Palmer, Trustee. Claimant submitted an Answer to Fifth Third's Affirmative Defenses on or about August 2, 2005.

The Motion to Dismiss, Answer and Affirmative Defenses was filed by Fifth Third on or about July 5, 2005.

Claimant filed a Brief in Support of its Opposition to Fifth Third's Motion to Dismiss on or about July 25, 2005.

The Motion to Dismiss, Answer and Affirmative Defenses was filed jointly by Oppenheimer and Beer on or about August 1, 2005. The Submission Agreement of Oppenheimer was signed on or about August 9, 2005, by Eric J. Shames, General Counsel and Corporate Secretary. The Submission Agreement of Beer was signed on or about August 18, 2005.

Fifth Third filed a Motion to Dismiss on or about May 1, 2006. Claimant filed a Brief in Support of its Opposition to Fifth Third's Motion to Dismiss on or about May 19, 2006. Fifth Third filed a Reply Brief in Support of its Motion to Dismiss on or about May 30, 2006.

### **CASE SUMMARY**

Claimant asserted the following causes of action or claims for relief: violation of NASD Rules of Fair Practice; negligence; respondeat superior; breach of supervisory rules; breach of fiduciary duty; negligent misrepresentation; negligent supervision; malpractice; common law fraud; violation of Rule 10b-5 of the Securities Exchange Act of 1934; rescission; securities fraud; violation of § 451.810 of the Michigan Uniform Securities Act; conversion of funds; promissory estoppel; and quantum meruit. The causes of action related to the purchase of unrestricted common stock in Michigan Community Bancorp at its initial public offering. Claimant asserted that Respondents failed to follow Claimant's instruction regarding the issuance and delivery of the stock to Peoples Bank which rendered Claimant's loan in default.

Unless specifically admitted in its Answer, Fifth Third denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant fails to state a claim upon which relief may be granted; Claimant's claims are barred under Rule 10304 of the NASD Code of Arbitration Procedure; Claimant's claims are barred under the statutes of limitations; and Claimant's claims are barred under the doctrines of laches and waiver.

Unless specifically admitted in their Answer, Oppenheimer and Beer denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: Claimant fails to state a claim upon which relief may be granted; Claimant's claims are barred by NASD Rule 10304(a) and the applicable statute(s) of limitations; Claimant's claims are barred by the doctrines of waiver, estoppel and/or laches; and Claimant's own negligence, comparative negligence and/or contributory negligence bars recovery.

### **RELIEF REQUESTED**

Claimant requested:

Compensatory damages	\$ 301,245.00
Punitive/Exemplary Damages	\$ unspecified
Interest	\$ unspecified
Attorneys' Fees	\$ unspecified
Other Costs	\$ unspecified
Other Monetary/Non-Monetary Relief:	\$ unspecified

Fifth Third requested that the claims asserted against it be dismissed in their entirety and that it be awarded its costs and attorneys' fees.

Oppenheimer and Beer requested that the claims asserted against them be dismissed in their entirety.

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

Respondent Fifth Third Securities, Inc., 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 answered the claim, and appeared and testified at the hearing through a representative is bound by the determination of the arbitration panel on all issues submitted.

In its Order entered on or about November 7, 2005, the panel denied Fifth Third's and Oppenheimer's Motions to Dismiss without prejudice.

In its Order entered on or about June 1, 2006, the panel denied Fifth Third's Motion to Dismiss without prejudice.

After the close of Claimant's case-in-chief, Respondents jointly moved for a directed verdict. The panel granted the motion on the record. The panel further advised the parties that it was granting Fifth Third's request for attorney's fees.

Pursuant to the panel's Order, Fifth Third filed a post-hearing submission containing an affidavit of attorney's fees on June 13, 2006.

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, the evidence presented at the hearing, and the post-hearing submission, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1.) Claimant's claims, each and all, are denied and dismissed with prejudice;
- 2.) Claimant, The Linda M. Palmer Trust U/D/A 12/12/91, shall pay to Respondent, Fifth Third Securities, Inc., the sum of \$3,187.50 in attorney's fees;
- 3.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4.) Any relief not specifically enumerated, including punitive and exemplary damages, 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

### **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 Fifth Third Securities, Inc., and Oppenheimer & Co., Inc.

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 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) Decisions on discovery-related motions on the papers submitted by Claimant  
with one (1) arbitrator @ \$200.00 = \$ 400.00

One (1) Decision on a discovery-related motion on the papers submitted jointly by  
Oppenheimer and Beer with three (3) arbitrators @ \$600.00 = \$ 600.00

Three (3) Pre-hearing sessions with Panel x \$1,125.00 = \$ 3,375.00

Pre-hearing conferences: October 17, 2005 1 session  
November 4, 2005 1 session  
June 1, 2006 1 session

Four (4) Hearing sessions x \$1,125.00 = \$ 4,500.00

Hearing Dates: June 6, 2006 2 sessions  
June 7, 2006 2 sessions

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Total Forum Fees = \$ 8,875.00

The Arbitration Panel has assessed \$4,937.50 of the forum fees to The Linda M. Palmer Trust U/D/A 12/12/91.

The Arbitration Panel has assessed \$1,968.75 of the forum fees to Oppenheimer & Co., Inc.

The Arbitration Panel has assessed \$1,968.75 of the forum fees to Charles Beer.

**Fee Summary**

Claimant, The Linda M. Palmer Trust U/D/A 12/12/91, is solely liable for:

Initial Filing Fee	= \$ 300.00
Forum Fees	= \$ 4,937.50
Total Fees	= \$ 5,237.50
Less payments	= \$ 1,425.00
Balance Due NASD Dispute Resolution	= \$ 3,812.50

Respondent, Fifth Third Securities, Inc., 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, Oppenheimer & Co., Inc., is solely liable for:

Member Fees	= \$ 5,200.00
Forum Fees	= \$ 1,968.75
Total Fees	= \$ 7,168.75
Less payments	= \$ 5,200.00
Balance Due NASD Dispute Resolution	= \$ 1,968.75

Respondent, Charles Beer, is solely liable for:

Forum Fees	= \$ 1,968.75
Total Fees	= \$ 1,968.75
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 1,968.75

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

**ARBITRATION PANEL**

Michael Patterson, Esq. – Public Arbitrator, Presiding Chair  
Verne C. Hampton, II, Esq. - Public Arbitrator  
Norman A. Samson - Non-Public Arbitrator

**Concurring Arbitrators:**

/s/ Michael Patterson, Esq.  
Michael Patterson, Esq.  
Public Arbitrator, Presiding Chair

06/13/06  
Signature Date

/s/ Verne C. Hampton, II, Esq.  
Verne C. Hampton, II, Esq.  
Public Arbitrator

06/13/06  
Signature Date

/s/ Norman A. Samson  
Norman A. Samson  
Non-Public Arbitrator

06/12/06  
Signature Date

06/13/06  
Date of Service (For NASD office use only)

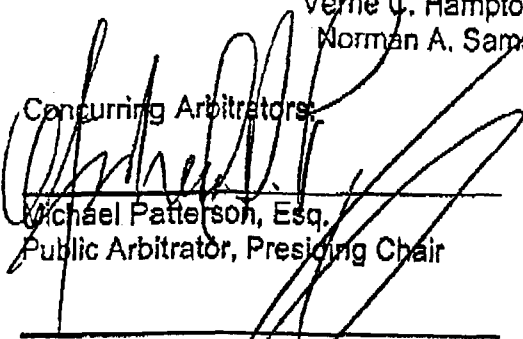
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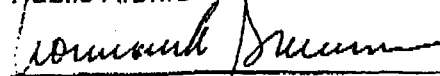
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