
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Names of the Claimants

Case Number: 05-04646

Larry Rinker
Michael McKnight
Mark Wiebe
Jason Bateman and,
Steve Axman, each individually and each on
behalf of any of their retirement accounts,
trusts, etc. used to invest in Red Coat Capital Partners III

Names of the Respondents

Hearing Site: Orlando, Florida

CIBC World Markets Corp.
Oppenheimer & Co. a/k/a Fahnstock & Co.

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For Larry Rinker ("Rinker"), Michael McKnight ("McKnight"), Mark Wiebe ("Wiebe"), Jason Bateman ("Bateman") and Steve Axman ("Axman"), each individually and each on behalf of any of their retirement accounts, trusts, etc. used to invest in Red Coat Capital Partners III, hereinafter collectively referred to as "Claimants": Phillip J. Snyderburn, Esq., Snyderburn, Rishoi & Swann, Maitland, Florida.

For Respondent CIBC World Markets Corp. ("CIBC"): Neil M. Soltman, Esq., Mayer, Brown, Rowe & Maw LLP, Los Angeles, California.

For Respondent Oppenheimer & Co. a/k/a Fahnstock & Co. ("Oppenheimer"): Eric J. Shames, Esq., Oppenheimer & Co., Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: September 1, 2005.
Claimant Rinker signed the Uniform Submission Agreement: August 23, 2005.
Claimant McKnight signed the Uniform Submission Agreement: August 5, 2005.
Claimant Wiebe signed the Uniform Submission Agreement: August 23, 2005.
Claimant Bateman signed, but did not date, the Uniform Submission Agreement.
Claimant Axman signed, but did not date, the Uniform Submission Agreement.
Statement of Answer filed by Respondent CIBC on or about: November 22, 2005..

Respondent CIBC signed the Uniform Submission Agreement: November 22, 2005.

Respondent Oppenheimer did not file a Statement of Answer or a signed Uniform Submission Agreement.

Motion to Dismiss filed by Respondent CIBC on or about: August 16, 2006.

Joinder to Respondent CIBC's Motion to Dismiss filed by Respondent Oppenheimer on or about: August 16, 2006.

Response to Motion to Dismiss and/or Motion for Summary Adjudication filed by Claimants on or about: August 28, 2006.

Reply in Support of its Motion to Dismiss filed by Respondent CIBC on or about: September 15, 2006.

Amendment to Response to Motion to Dismiss and/or Motion for Summary Adjudication filed by Claimants on or about: September 18, 2006.

Motion to Dismiss (Second Motion to Dismiss) filed by Respondent CIBC on or about: November 10, 2006.

Response to Motion to Dismiss and Request for Summary Adjudication filed by Claimants on or about: November 22, 2006.

Supplement to Response to Motion to Dismiss and Supplement to Request for Summary Adjudication filed by Claimants on or about: November 28, 2006.

Reply in Support of its Motion to Dismiss After the Close of Claimants' Case filed by Respondent CIBC on or about: December 1, 2006.

Reply in Support of their Motion for Summary Adjudication filed by Claimants on or about: December 7, 2006.

CASE SUMMARY

Claimants asserted the following causes of action: 1) fraudulent inducement; 2) breach of fiduciary duty, 3) negligence; and, 4) breach of contract. The causes of action relate to their investment in the Red Coat Capital Partners, III hedge fund.

Unless specifically admitted in its Answer, Respondent CIBC denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

Claimants requested compensatory damages in the total amount of \$1,697,000.00, interest, costs and punitive damages.

Respondent CIBC requested that the Statement of Claim be dismissed in its entirety, with prejudice, deny all relief requested and an award of costs, including reasonable attorneys' fees plus such other and further relief as this Panel deemed proper.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent Oppenheimer did not file with NASD Dispute Resolution a properly executed submission to arbitration but is required to submit to arbitration pursuant to the NASD Code of

Arbitration Procedure (the "Code") and is bound by the determination of the Panel on all issues submitted.

On or about September 18, 2006, Claimants and Respondent Oppenheimer filed with NASD Dispute Resolution a Notice of Stipulation between said parties, wherein Claimants agreed to withdraw their claims against Respondent Oppenheimer, without prejudice.

On or about September 22, 2006, the Panel issued an Order that denied Respondent CIBC's Motion to Dismiss.

On December 15, 2006, a telephonic hearing was held to hear oral argument on Claimants' Emergency Motion to Strike Respondent CIBC's Trial Transcript, Claimants' Motion for Summary Adjudication and Respondents Second Motion to Dismiss. The Panel denied Claimants' Emergency Motion to Strike Respondent CIBC's Trial Transcript and Claimants' Motion for Summary Adjudication. The Panel granted Respondent CIBC's Second Motion to Dismiss.

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 testimony and evidence presented at the hearing and the telephonic hearing, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Respondent CIBC's Motion to Dismiss (Second Motion to Dismiss) is granted and Claimants' claims are dismissed in their entirety.

The parties shall bear their own attorneys' fees.

Any and all claims for relief not specifically addressed herein, including Claimants' request for punitive damages, are dismissed.

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 = \$ 500.00

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

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

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

Member surcharge	= \$ 2,800.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$ 5,000.00
Total Member Fees	= \$ 8,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

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

Injunctive relief fees are assessed to each member or associated person who files for a temporary injunction in court. Parties in these cases are also assessed arbitrator travel expenses and costs when an arbitrator is required to travel outside his or her hearing location and additional arbitrator honoraria for the hearing for permanent injunction. These fees, except the injunctive relief surcharge, are assessed equally against each party unless otherwise directed by the panel.

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 one (1) Arbitrator @\$200.00	
Claimant submitted one (1) discovery-related motion	
Respondent submitted one (1) discovery-related motion	
Non-party submitted one (1) discovery-related motion	

One (1) Pre-hearing session with a single arbitrator @ \$450.00 = \$ 450.00
Pre-hearing conference: October 10, 2006 1 session

Three (3) Pre-hearing sessions with the Panel @ \$1,200.00 = \$3,600.00
Pre-hearing conferences: January 4, 2006 1 session
September 20, 2006 1 session
December 15, 2006 1 session

Ten (10) Hearing sessions with the Panel @ \$1,200.00 = \$12,000.00
Hearing Dates: October 16, 2006 2 sessions
October 17, 2006 2 sessions
October 18, 2006 2 sessions
October 19, 2006 2 sessions
October 20, 2006 2 sessions

Total Forum Fees = \$16,650.00

The Panel has assessed \$8,325.00 of the forum fees jointly and severally to Claimants.
The Panel has assessed \$8,325.00 of the forum fees to Respondent CIBC.

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	= \$ 500.00
Forum Fees	= \$ 8,325.00
Total Fees	= \$ 8,825.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 7,125.00

Respondent CIBC is solely liable for:

Member Fees	= \$ 8,550.00
Forum Fees	= \$ 8,325.00
Total Fees	= \$ 16,875.00
Less payments	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 8,325.00

Respondent Oppenheimer is solely liable for:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00

<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

<i>Harvey Alan Blicksilver, Esq.</i>	-	<i>Public Arbitrator, Presiding Chairperson</i>
<i>James W. Robinson, PhD.</i>	-	<i>Public Arbitrator</i>
<i>Robert W. Schlitt, Jr.</i>	-	<i>Non-Public Arbitrator</i>

Concurring Arbitrators' Signatures

/s/
Harvey Alan Blicksilver, Esq.
Public Arbitrator, Presiding Chairperson

12/18/06
Signature Date

/s/
James W. Robinson, PhD.
Public Arbitrator

12/18/06
Signature Date

/s/
Robert W. Schlitt, Jr.
Non-Public Arbitrator

12/18/06
Signature Date

12/18/06
Date of Service (For NASD Dispute Resolution office use only)

NASD Dispute Resolution
Arbitration No. 05-04648
Award Page 6

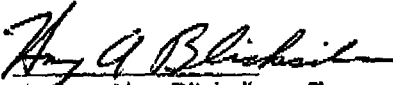
<u>Less payments</u>	= \$ 8,560.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Harvey Alan Blicksilver, Esq.	-	Public Arbitrator, Presiding Chairperson
James W. Robinson, PhD.	-	Public Arbitrator
Robert W. Schlitt, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures


Harvey Alan Blicksilver, Esq.
Public Arbitrator, Presiding Chairperson

12-18-06
Signature Date

James W. Robinson, PhD.
Public Arbitrator

Signature Date

Robert W. Schlitt, Jr.
Non-Public Arbitrator

Signature Date

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

<u>Less payments</u>	= \$ 8,550.00
Balance Due NASD Dispute Resolution	= \$ 0.00

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

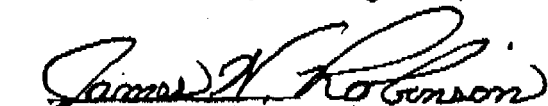
ARBITRATION PANEL

Harvey Alan Blicksilver, Esq.	-	Public Arbitrator, Presiding Chairperson
James W. Robinson, PhD.	-	Public Arbitrator
Robert W. Schlitt, Jr.	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Harvey Alan Blicksilver, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date


James W. Robinson, PhD.
Public Arbitrator

12/18/2006
Signature Date

Robert W. Schlitt, Jr.
Non-Public Arbitrator

Signature Date

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

<u>Less payments</u>	<u>= \$ 8,550.00</u>
Balance Due NASD Dispute Resolution	= \$ 0.00

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

ARBITRATION PANEL

Harvey Alan Blicksilver, Esq.	-	Public Arbitrator, Presiding Chairperson
James W. Robinson, PhD.	-	Public Arbitrator
Robert W. Schlitt, Jr.	-	Non-Public Arbitrator

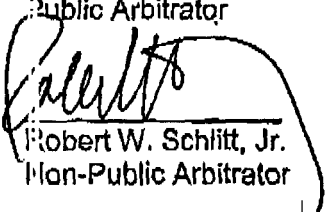
Concurring Arbitrators' Signatures

Harvey Alan Blicksilver, Esq.
Public Arbitrator, Presiding Chairperson

Signature Date

James W. Robinson, PhD.
Public Arbitrator

Signature Date



Robert W. Schlitt, Jr.
Non-Public Arbitrator

12/18/16

Signature Date

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