
Award
NASD Dispute Resolution

In the Matter of the Arbitration Between:

Name of the Claimant

James Roach, Alice Roach (deceased)
and James Roach, Jr., JTWROS

Case Number: 05-05137

Names of the Respondents

Fahnestock & Co., Inc. n/k/a
Oppenheimer & Co., Inc.

Hearing Site: Boca Raton, Florida

Nature of the Dispute: Customer vs. Member.

REPRESENTATION OF PARTIES

For James Roach, Alice Roach (deceased) and James Roach, Jr., JTWROS, hereafter referred to as "Claimant": Darren C. Blum, Esq., Blum & Silver, LLP, Coral Springs, Florida, until May 16, 2006. Thereafter, Claimant appeared pro se.

For Fahnestock & Co., Inc. n/k/a Oppenheimer & Co., Inc., hereinafter referred to as "Respondent": William J. Manning, Jr., Esq., Loeb & Loeb LLP, New York, New York.

CASE INFORMATION

Statement of Claim filed on or about: October 3, 2005.

Claimant signed the Uniform Submission Agreement: September 18, 2005.

Statement of Answer filed by Respondent on or about: January 3, 2006.

Respondent signed the Uniform Submission Agreement: October 15, 2005.

Motion to Dismiss Statement of Claim filed by Respondent on or about: April 28, 2006.

Request for Adjournment [pending resolution of Motion to Dismiss] filed by Respondent on or about: October 13, 2006.

Renewed Request for Dismissal filed by Respondent on or about: November 27, 2006.

Response to Renewed Request for Dismissal filed by Claimant on or about: December 5, 2006.

Reply to Claimant's Response to Renewed Request for Dismissal filed by Respondent on or about: December 6, 2006.

CASE SUMMARY

Claimant asserted the following causes of action: 1) violation of industry rules, including, but not limited to, NYSE's "Know Your Customer" standard (Rule 405) and NASD's customer suitability standard (Rule 2310); 2) breach of contract; 3) churning; 4) breach of fiduciary duty; 5) common law fraud; 6) negligence; and, 7) negligent hiring, retention and supervision of employees. The causes of

action relate to the use of margin as well as the purchase in Claimant's account of various unspecified common stocks in the technology, telecommunications and internet sectors of the market.

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 the following: 1) compensatory damages in the amount of \$100,000.00; 2) interest at the legal rate from the date of purchase or reasonable market return; 3) rescission; 4) punitive damages; 5) reimbursement of all costs for these proceedings; and, 6) such other relief as deemed just and proper by the Panel.

Respondents requested the following: 1) that the Statement of Claim be dismissed in its entirety; 2) reimbursement of all costs for these proceedings, including attorneys' fees; and, 3) such other and further relief as deemed just and proper by the Panel.

OTHER ISSUES CONSIDERED AND DECIDED

Respondent filed a motion to dismiss in which Respondent asserted the following: 1) Claimant failed to comply with NASD Notice to Members 99-90; 2) Claimant failed to properly respond to NASD Rule 10321 discovery demands; 3) Claimant failed to comply with the Panel's Initial Pre-hearing Conference Scheduling Order that established time frames for the discovery process; and, 4) Claimant failed to comply with the Panel's July 6, 2006 Order that required Claimant to produce documents to Respondent no later than August 25, 2006. Claimant did not respond to this motion.

Before the Panel issued an order on Respondent's motion to dismiss, Respondent requested an adjournment of the evidentiary hearing scheduled to begin on October 30, 2006, to which Claimant did not respond. On October 23, 2006, the Panel issued an Order granting Respondent's request for adjournment and further directing Claimant to produce certain discovery materials to Respondent no later than November 22, 2006. The Order further stated that Claimant's failure to comply with the November 22, 2006 deadline would result in a dismissal of the claim, with prejudice.

Respondent filed a renewed request for dismissal in which Respondent asserted that Claimant failed to comply with the Panel's October 23, 2006 Order directing Claimant to produce documents to Respondent by November 22, 2006. Claimant objected to Respondent's renewed request. On or about December 15, 2006, the Panel issued an Order dismissing Claimant's claim, with prejudice.

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 as well as all motions and responses filed in this matter, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

Claimant's claims are dismissed, with prejudice.

Any and all claims for relief not specifically addressed herein, including Claimant's request for punitive damages, are denied.

FEES

Pursuant to the NASD Code of Arbitration Procedure (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	= \$ 225.00
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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 is a party to this dispute and was a member of NASD at the time the following fees were assessed:

Member surcharge	= \$1,100.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$1,700.00
Total Member Fees	= \$3,550.00

Adjournment Fees

Adjournments granted during these proceedings for which fees were assessed:

October 30-31 and November 1-2, 2006, adjournment by Respondent	= \$ 750.00
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The Panel has assessed \$375.00 of the adjournment fee to Claimant.

The Panel has assessed \$375.00 of the adjournment fee to Respondent.

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:

Two (2) Decisions on discovery-related motions on the papers
decided by one Arbitrator @\$200.00/decision = \$ 400.00

Claimant submitted one discovery-related motion
Respondent submitted one discovery-related motion

One (1) Pre-hearing session with the Panel @ \$750.00 = \$ 750.00
Pre-hearing conference: February 10, 2006 1 session

Total Forum Fees = \$1,150.00

The Panel has assessed \$675.00 of the forum fees to Claimant.
The Panel has assessed \$475.00 of the forum fees to Respondent.

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

Claimant is solely liable for:

Initial Filing Fee	= \$ 225.00
Adjournment Fees	= \$ 375.00
Forum Fees	= \$ 675.00
Total Fees	= \$1,275.00
Less payments	= \$1,275.00
Balance Due NASD Dispute Resolution	= \$ 0.00

Respondent is solely liable for:

Member Fees	= \$3,550.00
Adjournment Fees	= \$ 375.00
Forum Fees	= \$ 475.00
Total Fees	= \$4,400.00
Less payments	= \$3,550.00
Balance Due NASD Dispute Resolution	= \$ 850.00

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

ARBITRATION PANEL

Craig R. Weiner	-	Public Arbitrator, Presiding Chairperson
Cheryl E. Winton	-	Public Arbitrator
Jerry A. Desiderio	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

/s/
Craig R. Weiner
Public Arbitrator, Presiding Chairperson

December 19, 2006
Signature Date

/s/
Cheryl E. Winton
Public Arbitrator

December 19, 2006
Signature Date

/s/
Jerry A. Desiderio
Non-Public Arbitrator

December 19, 2006
Signature Date

December 20, 2006
Date of Service (For NASD Dispute Resolution office use only)

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Cheryl E. Winton	-	Public Arbitrator
Jerry A. Desiderio	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures



Craig R. Weiner
Public Arbitrator, Presiding Chairperson

12/14/06

Signature Date

Cheryl E. Winton
Public Arbitrator

Signature Date

Jerry A. Desiderio
Non-Public Arbitrator

Signature Date

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

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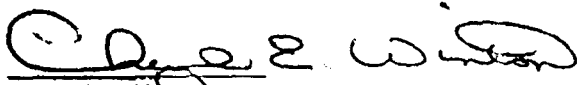
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Jerry A. Desiderio	-	Non-Public Arbitrator

Concurring Arbitrators' Signatures

Craig R. Weiner
Public Arbitrator, Presiding Chairperson

Signature Date



Cheryl E. Winton
Public Arbitrator

12/19/2006
Signature Date

Jerry A. Desiderio
Non-Public Arbitrator

Signature Date

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

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Cheryl E. Winton
Jerry A. Desiderio

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Public Arbitrator, Presiding Chairperson
Public Arbitrator
Non-Public Arbitrator

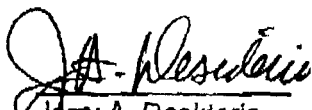
Concurring Arbitrators' Signatures

Craig R. Weiner
Public Arbitrator, Presiding Chairperson

Signature Date

Cheryl E. Winton
Public Arbitrator

Signature Date



Jerry A. Desiderio
Non-Public Arbitrator

12/19/06

Signature Date

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