

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

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In the Matter of the Arbitration Between

Names of Claimants

First of Michigan Corp. n/k/a  
Oppenheimer & Co., Inc., and  
Fahnestock & Co., Inc. n/k/a  
Oppenheimer & Co., Inc.

and

Case Number: 98-00023  
Hearing Site: Southfield, Michigan

Names of Respondents

Robert W. Baird & Co., Inc.  
Robert Stanczak, Rex Stanczak,  
Frederick Trudo, William Phillips,  
Bruce Dunbar, Patty Dawson, and  
Terri Metter

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**NATURE OF DISPUTE**

Member and Terminated Member v. Member and Associated Persons

**REPRESENTATION OF PARTIES**

First of Michigan Corp. n/k/a Oppenheimer & Co., Inc. ("FOMC" or "Claimant") and Fahnestock & Co., Inc. n/k/a Oppenheimer & Co., Inc., ("Fahnestock") hereinafter collectively referred to as "Claimants," were represented by Mark L. Kowalsky, Esq., Hertz, Schram & Saretsky, P.C., Bloomfield Hills, Michigan, Michael J. McAllister, Esq., Satterlee, Stephens, Burke & Burke, LLP, New York, New York, and Eric J. Shames, Esq., Oppenheimer & Co., Inc., New York, New York.

Robert W. Baird & Co., Inc. ("Baird"), Robert Stanczak, Rex Stanczak, Frederick Trudo ("Trudo"), William Phillips ("Phillips"), Bruce Dunbar ("Dunbar"), Patty Dawson ("Dawson"), and Terri Metter ("Metter"), hereinafter collectively referred to as "Respondents," were represented by Christopher Barber, Esq., and Ruth I. Major, Esq., Gardner Carton & Douglas, Chicago, Illinois, as of on or about February 14, 2003. Respondents were also represented by Dennis K. Egan, Esq., Butzel Long, Bloomfield Hills, Michigan as of on or about November 14, 2002. Respondents were represented by Gregory G. Wille, Esq., Wille, Gregory & Lundeen, Milwaukee, Wisconsin, from the filing of the matter until on or about November 14, 2002.

### **CASE INFORMATION**

The Statement of Claim was filed on or about January 2, 1998. The Submission Agreement of Claimant, First of Michigan Corp. n/k/a Oppenheimer & Co., Inc., was signed on or about December 31, 1997, by Jeffrey Plopa, Vice-President and General Counsel.

Statement of Answer was filed jointly by Respondents, Robert W. Baird & Co., Inc., Robert Stanczak, Rex Stanczak, Frederick Trudo, William Phillips, Bruce Dunbar, Patty Dawson, and Terri Metter, on or about March 17, 1998. Rex Stanczak's Counterclaim was contained in the Statement of Answer filed on or about March 17, 1998.

The Submission Agreement of Respondent, Robert W. Baird & Co., Inc., was signed on or about February 13, 1998, by Deborah J. Fabritz, First Vice President. The Submission Agreement of Respondent, Robert Stanczak, was signed on or about February 24, 1998. The Submission Agreement of Respondent, Rex Stanczak, was signed on or about February 14, 1998. The Submission Agreement of Respondent, Frederick Trudo, was signed on or about February 24, 1998. The Submission Agreement of Respondent, William Phillips, was signed on or about February 24, 1998. The Submission Agreement of Respondent, Bruce Dunbar, was signed on or about February 24, 1998. The Submission Agreement of Respondent, Patty Dawson, was signed on or about February 24, 1998. The Submission Agreement of Respondent, Terri Metter, was signed on or about was signed on or about February 24, 1998.

The First Amended Statement of Claim was filed on or about June 21, 2001. Respondents, Baird and Robert Stanczak, filed an Answer to the First Amended Statement of Claim on or about April 29, 2003.

Respondents filed a Motion for Sanctions, Motion to Disqualify Hertz, Schram & Saretsky, and Motion to Remove First of Michigan Corp. as a Claimant on or about December 16, 2002. Claimant filed its Response on or about December 27, 2002. Respondents filed a Reply on or about January 6, 2003.

Claimants filed a Motion to Allow Presentation of Evidence of Damages Incurred in West Bloomfield on or about July 1, 2004. Respondents, Baird and Robert Stanczak, filed their Response to the Motion on or about July 9, 2004.

Respondents, Baird and Robert Stanczak, filed a Motion to Strike New Evidence on or about August 30, 2004. Claimants filed a Response on or about September 2, 2004. Respondents, Baird and Robert Stanczak, filed a Reply on or about September 8, 2004.

### **CASE SUMMARY**

Claimants asserted the following causes of action: unfair competition/raiding by Baird; conversion; breach of fiduciary duty by Robert Stanczak; tortious interference with contracts and advantageous business relationships against Respondents; misappropriation of trade secrets and confidential information; unlawful conspiracy; unjust enrichment; and violation of NASD rule of Conduct 2110. The causes of action related to Claimants' allegations that Respondents conducted a raid of their Ann Arbor, Michigan branch office.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: FOMC's own acts or omissions caused its alleged harm by its unwillingness or inability to address the numerous problems brought to its attention throughout the summer and fall of 1997; FOMC failed to mitigate its alleged damages by failing to adequately address the complaints of brokers and clients following the merger and by its conduct following the initial departures of brokers.

Respondent, Rex Stanczak, filed a Counterclaim for defamation against Claimant.

### **RELIEF REQUESTED**

Claimants requested an award in an unspecified amount of actual damages, plus pre-judgment interest, punitive damages, costs, attorneys' fees, expenses, and such other and further relief as may be just and proper. In Claimants' post-hearing brief, they specifically requested \$6,831,844.00 in lost profits and interest from the Ann Arbor and West Bloomfield offices, plus \$213,770.57 in attorneys' fees.

All Respondents requested that the claims asserted against them be dismissed in their entirety and that they be awarded their costs, forum fees, and attorneys' fees.

Respondent, Rex Stanczak, requested that his Form U-5 be expunged of any reference to his having attempted to solicit other FOMC employees to join him at a competing firm.

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

Claimant FOMC's oral Request to Submit a First Amended Statement of Claim was granted at the pre-hearing conference on March 14, 2001. Claimants, First of Michigan Corp. and Fahnestock, Inc., were named as parties in the First Amended Statement of Claim. Respondents, Rex Stanczak, Frederick Trudo, William Phillips, Bruce Dunbar, Patty Dawson, and Terri Metter, were not named in the Amended Statement of Claim.

Respondents withdrew their Motion for Sanctions, Motion to Disqualify Hertz, Schram & Saretsky, and Motion to Remove First of Michigan Corp. as a Claimant on or about April 3, 2003.

The Panel granted Claimants' Motion to Allow Presentation of Evidence of Damages Incurred in West Bloomfield on or about July 13, 2004.

On or about May 25, 2004, pursuant to Rule 10308 of the NASD Code of Arbitration Procedure, Arbitrator David L. Tornga was reclassified from a non-public to a public arbitrator. The parties accepted the composition of the Panel.

The parties filed post-hearing submissions on or about August 27, 2004.

Rex Stanczak did not present any argument in support of his counterclaim.

The panel considered evidence that had been admitted on or before July 20, 2004, consistent with the panel's ruling on that date, which ruling was reconfirmed on July 30, 2004.

All written motions presented by the parties, noted and not noted herein, which the Panel did not previously rule on are hereby denied.

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

- 1.) Respondents, Robert W. Baird & Co., Inc., and Robert Stanczak, are jointly and severally liable for and shall pay to Claimants, First of Michigan Corp. n/k/a Oppenheimer & Co., Inc., and Fahnestock & Co., Inc. n/k/a Oppenheimer & Co., Inc., the sum of \$1,206,299.00 in damages;
- 2.) First of Michigan Corp.'s n/k/a Oppenheimer & Co. Inc.'s claims against Respondents, Rex Stanczak, Frederick Trudo, William Phillips, Bruce Dunbar, Patty Dawson, and Terri Metter, are dismissed with prejudice as a result of the filing of the Amended Statement of Claim;
- 3.) Rex Stanczak's Counterclaim is dismissed with prejudice;
- 4.) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter;
- 5.) Any relief not specifically enumerated, including punitive damages and attorney 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	= \$	500.00
Counterclaim 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. In this matter, the member firms are First of Michigan Corp. n/k/a Oppenheimer & Co., Inc. and Fahnestock & Co., Inc., n/k/a Oppenheimer & Co., Inc., and Robert W. Baird & Co., Inc.

Member surcharge	= \$	1,200.00
Pre-hearing process fee	= \$	600.00
Hearing process fee	= \$	2,000.00

### **Adjournment Fees**

Adjournments requested during these proceedings:

December 8-11, 1998, adjournment requested jointly, assessed to Claimant	= \$	600.00
December 7-9, and 14-16, 1999, adjournment requested jointly, assessed to Claimant	= \$	1,000.00
August 14-18, 2000, adjournment requested jointly, assessed to Claimant	= \$	1,000.00
March 12-16, 2001, adjournment requested jointly, assessed to Claimant	= \$	1,000.00
December 10-12 and 15-17, 2003, adjournment requested jointly	= \$	1,200.00
January 12-16, 2004, adjournment requested jointly	= \$	1,200.00
January 19, 2004, adjournment requested jointly	= \$	1,200.00
July 2, 2004, adjournment requested jointly, assessed to Claimant	= \$	1,200.00

### **Forum Fees and Assessments**

The Arbitration Panel assesses forum fees for each hearing session conducted. 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:

Five (5) Pre-hearing sessions with a single arbitrator x \$300.00 = \$1,500.00

Pre-hearing conferences: July 23, 2003 1 session  
July 30, 2003 1 session  
October 7, 2003 1 session  
November 17, 2003 1 session  
December 15, 2003 1 session

Eight (8) Pre-hearing sessions with Panel x \$600.00 = \$4,800.00

Pre-hearing conferences: March 14, 2001 1 session  
July 19, 2001 1 session  
November 19, 2002 1 session  
December 19, 2002 1 session  
January 6, 2003 1 session  
April 18, 2003 1 session  
December 23, 2003 1 session  
January 19, 2004 1 session

Thirty-Six (36) Hearing sessions x \$600.00 = \$21,600.00

Hearing Dates: January 20, 2004 2 sessions  
January 21, 2004 2 sessions  
January 22, 2004 2 sessions  
January 23, 2004 2 sessions  
June 14, 2004 2 sessions  
June 15, 2004 2 sessions  
June 16, 2004 2 sessions  
June 29, 2004 2 sessions  
June 30, 2004 2 sessions  
July 1, 2004 2 sessions  
July 13, 2004 3 sessions  
July 14, 2004 2 sessions  
July 15, 2004 2 sessions  
July 16, 2004 2 sessions  
July 19, 2004 2 sessions  
July 20, 2004 3 sessions  
July 30, 2004 2 sessions

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Total Forum Fees = \$27,900.00

The Arbitration Panel has assessed \$13,950.00 of the forum fees to First of Michigan Corp. n/k/a Oppenheimer & Co., Inc., and Fahnestock & Co., Inc. n/k/a Oppenheimer & Co., Inc.

The Arbitration Panel has assessed \$13,950.00 of the forum fees jointly and severally to Robert W. Baird & Co., Inc. and Robert Stanczak.

### FEE SUMMARY

Claimants, First of Michigan Corp. n/k/a Oppenheimer & Co., Inc., and Fahnestock & Co., Inc., n/k/a Oppenheimer & Co., Inc., are jointly and severally liable for:

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 3,800.00
Adjournment Fee	= \$ 6,600.00
Forum Fees	= \$ 13,950.00
Total Fees	= \$ 24,850.00
Less payments	= \$ 6,900.00
Balance Due NASD Dispute Resolution	= \$ 17,950.00

Respondent, Robert W. Baird & Co., Inc., is liable for:

Member Fees	= \$ 3,800.00
Adjournment Fee	= \$ 1,800.00
Total Fees	= \$ 5,600.00
Less payments	= \$ 2,000.00
Balance Due NASD Dispute Resolution	= \$ 3,600.00

Respondent, Rex Stanczak, is liable for:

Counterclaim Filing Fee	= \$ 500.00
Total Fees	= \$ 500.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 500.00

Respondents, Robert W. Baird & Co., Inc., and Robert Stanczak, are jointly and severally liable for:

Forum Fees	= \$ 13,950.00
Total Fees	= \$ 13,950.00
Less payments	= \$ 0.00
Balance Due NASD Dispute Resolution	= \$ 13,950.00

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

**ARBITRATION PANEL**

Jacqueline R. Fox, Esq. - Public Arbitrator, Presiding Chair  
Ina N. Otto, Esq. - Public Arbitrator  
David Tornga, Esq. - Public Arbitrator

**Concurring Arbitrators:**

/s/ Jacqueline R. Fox, Esq.  
Jacqueline R. Fox, Esq.  
Public Arbitrator, Presiding Chair

09/15/04  
Signature Date

/s/ Ina N. Otto, Esq.  
Ina N. Otto, Esq.  
Public Arbitrator

09/16/04  
Signature Date

/s/ David L. Tornga  
David L. Tornga, Esq.  
Public Arbitrator

09/15/04  
Signature Date


09/16/04  
Date of Service (For NASD office use only)



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Jacqueline R. Fox, Esq. - Public Arbitrator, Presiding Chair  
Ina N. Otto, Esq. - Public Arbitrator  
David Tomga, Esq. - Public Arbitrator

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Public Arbitrator, Presiding Chair

9/15/04  
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David L. Tomga, Esq.  
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Signature Date

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Ina N. Otto, Esq.  
Public Arbitrator

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Signature Date

  
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David L. Tomnga, Esq.  
Public Arbitrator

September 15, 2004  
\_\_\_\_\_  
Signature Date

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Date of Service (For NASD office use only)