

NASD DISPUTE RESOLUTION AWARD
NASD DISPUTE RESOLUTION

CASE: 04-01946

Mark and Karen Tulper, Claimants v. Oppenheimer & Co. Inc. and James Gianni, Respondents

ATTORNEYS:

Claimants Mark and Karen Tulper, (collectively "Claimants") appeared pro se, through Mark Tulper, Chesterfield, MO.

Respondents, Oppenheimer & Co. and James Gianni (collectively "Respondents") appeared through in-house counsel Evelyn Bukchin, Esq., New York, NY.

NATURE OF DISPUTE: Customers v. Member and Associated Person.

DATE FILED: March 12, 2004.

CASE SUMMARY: Claimants alleged that Respondents misrepresented costs associated with the closing of their account. Claimants further alleged that Respondents disregarded letters, faxes, and phone calls by Claimants attempting to inquire about the closing charges.

COUNTERCLAIM SUMMARY: Respondents request reimbursement of the member surcharge assessed due to this claim.

ARBITRATOR'S REPORT: For the benefit of the parties, the undersigned arbitrator in a simplified case can only consider documents in the record, not unsworn statements of parties or witnesses. The monthly account statements are unambiguous that a charge of \$50.00 will be assessed for transferring an account. This charge is standard in the industry. I am not making any credibility determination because this is a simplified case. I am not making any determination as to whether there was a settlement. The broker's CRD should be expunged, as he was not involved in any investment-related sales practice violation, forgery, theft, or misappropriation.

Claim Data

Claim: \$50.00
Filing Fees: \$50.00
Other: Unspecified

Award Data

Award: \$.00
Filing Fees: \$25.00
Other: \$.00

Counterclaim Data

Claim: \$150.00
Filing Fees: \$375.00
Other: Unspecified

Award Data

Claim: \$.00
Filing Fees: \$.00
Other: \$.00

AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The Claimants' claim are dismissed in their entirety. 2) All other relief requests are denied. 3) NASD Dispute Resolution shall retain the \$50.00 filing fee that the Claimants deposited previously. 4) Respondents are jointly and severally liable and shall pay Claimants \$25.00 as reimbursement of one-half of the filing fee. 5) The arbitrator recommends the expungement of all reference to the above captioned arbitration

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from Respondent James Gianni's registration records maintained by the NASD Central Registration Depository ("CRD"), with the understanding that pursuant to NASD Notice to Members 99-09 and 99-54, Respondent James Gianni must obtain confirmation from a court of competent jurisdiction before CRD will execute the expungement directive.

COUNTERCLAIM AWARD: The undersigned arbitrator has decided and determined in full and final resolution of the issues submitted for determination as follows: 1) The Respondents counterclaim is dismissed in their entirety. 2) All other relief requests are denied. 3) NASD Dispute Resolution shall retain the \$225.00 counterclaim filing fee that the Respondents deposited previously.

OTHER FEES: Pursuant to Rule 10333 of the Code, Respondent Oppenheimer & Co. Inc. has paid to NASD Dispute Resolution the \$375.00 Member Surcharge previously invoiced.


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ARBITRATOR

Stuart R. Berkowitz - Sole Public Arbitrator

AFFIRMATION

I, Stuart R. Berkowitz, do hereby affirm, upon my oath as arbitrator that I am the individual described herein who executed this instrument, which is my oath and award.


Stuart R. Berkowitz

12.22.04
Signature Date

December 27, 2004
Date of Service (For NASD-DR office use only)