

**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

Name of the Claimant

Case Number: 04-02810

Hallee P. Morgan

Names of the Respondents

Hearing Site: Richmond, Virginia

Oppenheimer & Co. Inc.  
Gerald D. Levine

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Nature of the Dispute: Customer vs. Member and Associated Person.

**REPRESENTATION OF PARTIES**

Claimant Hallee P. Morgan, hereinafter referred to as "Claimant", was represented by John P. Connolly, Esq., Law Offices of John P. Connolly, Alexandria, Virginia.

Respondents Oppenheimer & Co. Inc. ("Oppenheimer") and Gerald D. Levine ("Levine"), hereinafter collectively referred to as "Respondents", were represented by Peter Vaughan, Esq., CIBC World Markets Corp., New York, New York.

**CASE INFORMATION**

Statement of Claim filed on April 13, 2004.

Claimant signed the Uniform Submission Agreement on March 30, 2004.

Statement of Answer filed by Respondents on March 4, 2005.

Respondents did not file Uniform Submission Agreements with NASD Dispute Resolution

Respondents filed a Motion to Dismiss on August 12, 2004.

Claimant filed an Opposition to Respondents' Motion to Dismiss and Claimant's Motion to Bar on August 24, 2004.

Respondents filed an Opposition to Claimant's Motion to Bar and Reply to Claimant's Opposition to Respondents' Motion to Dismiss on September 8, 2004.

**CASE SUMMARY**

Claimant asserted the following causes of action, among others: violation of section 10(b) and section 20(a) of the Securities Exchange Act of 1934 and S.E.C. Rule 10b-5, 17 C.F.R. §240.10b-5, promulgated thereunder; failure to supervise; violation of the Virginia Securities Act, VA code Ann §13.1-502; violation of NASD Rules of Conduct; breach of contract, constructive fraud; fraud and deceit; and breach of fiduciary duty. The causes of action relate to the purchase of ALLP stock.

Unless specifically admitted in their Answer, Respondents denied the allegations made in the Statement of Claim and asserted the following defenses, among others: failure to state a claim upon which relief may be granted; any losses were the result of Claimant's actions or market conditions; assumption of risk; waiver; ratification; acquiescence; estoppel; failure to mitigate; and Claimant failed to exercise reasonable care.

#### RELIEF REQUESTED

Claimant in her Statement of Claim requested:

Compensatory Damages	\$800,000.00
Investment Opportunity Loss Damages	\$200,000.00
Punitive Damages	\$350,000.00
Interest	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Respondents in their Statement of Answer requested that Claimant's allegations be denied with prejudice in their entirety.

#### OTHER ISSUES CONSIDERED AND DECIDED

Respondents did not file with NASD Dispute Resolution properly executed submissions to arbitration, but are required to submit to arbitration pursuant to the NASD Code of Arbitration Procedure ("Code") and having answered the claim, appeared at the hearing, are bound by the determination of the Panel on all issues submitted.

On February 11, 2005, the Panel denied Respondents' Motion to Dismiss and Claimant's Motion to Bar.

At the hearing, Respondents made a Motion to Strike Claimant's Evidence. The Panel denied said motion.

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.

#### AWARD

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

1. All claims against Respondents are denied in their entirety;
2. The parties shall bear their respective costs, including attorneys' fees, except as Fees are specifically addressed below; and

3. Any and all relief not specifically addressed herein, including punitive damages, is denied in its entirety.

### 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 firms that employed the associated person(s) at the time of the events giving rise to the dispute. Accordingly, Respondent Oppenheimer is a party.

Member surcharge = \$ 2,800.00

Pre-hearing process fee = \$ 750.00

Hearing process fee = \$ 5,000.00

Total Member Fees = \$ 8,550.00

#### Forum Fees and Assessments

The Panel has assessed forum fees for each session conducted. A 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:

One (1) Pre-hearing session with Panel @ \$1,200.00 = \$ 1,200.00

Pre-hearing conference: September 21, 2004 1 session

Three (3) Hearing sessions @ \$1,200.00 = \$ 3,600.00

Hearing Dates: May 24, 2005 2 sessions

May 25, 2005 1 session

Total Forum Fees = \$ 4,800.00

1. The Panel has assessed \$2,400.00 of the forum fees to Claimant.
2. The Panel has assessed \$2,400.00 of the forum fees jointly and severally to Respondents.

FEE SUMMARY

1. Claimant is assessed and shall pay the following fees:

Initial Filing Fee	= \$ 500.00
Forum Fees	= \$ 2,400.00
Total Fees	= \$ 2,900.00
Less payments	= \$ 1,700.00
Balance Due NASD Dispute Resolution	= \$ 1,200.00

2. Respondent Oppenheimer is assessed and shall pay the following fees:

Member Fees	= \$ 8,550.00
Total Fees	= \$ 8,550.00
Less payments	= \$11,150.00
Refund to be Returned to Respondent's CRD account	= \$ 2,600.00

3. Respondents are jointly and severally assessed and shall pay the following fees:

Forum Fees	= \$ 2,400.00
Total Fees	= \$ 2,400.00
Less payments	= \$ 2,400.00
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

William F. Etherington, Esq.	-	Public Arbitrator, Presiding Chairperson
Albert D. Sturtevant, Esq.	-	Public Arbitrator, Panelist
Tully C. Tupper	-	Non-Public Arbitrator, Panelist

Consenting Arbitrators' Signatures



William F. Etherington, Esq.  
Public Arbitrator, Presiding Chairperson

6/8/05

Signature Date

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Albert D. Sturtevant, Esq.  
Public Arbitrator, Panelist

\_\_\_\_\_  
Signature Date

\_\_\_\_\_  
Tully C. Tupper  
Non-Public Arbitrator, Panelist


\_\_\_\_\_  
Signature Date

June 9, 2005  
Date of Service (For NASD Dispute Resolution office use only)

Concurring Arbitrators' Signatures

\_\_\_\_\_  
William F. Etherington, Esq.  
Public Arbitrator, Presiding Chairperson

\_\_\_\_\_  
Signature Date

  
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Albert D. Sturtevant, Esq.  
Public Arbitrator, Panelist

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Public Arbitrator, Panelist

Signature Date

Tully C. Tupper  
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Non-Public Arbitrator, Panelist

6/9/05  
Signature Date

June 9, 2005  
Date of Service (For NASD Dispute Resolution office use only)