

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Claimant/Counter-Respondent

Mari McCain

and

Case Number: 04-07853
Hearing Site: Houston, Texas

Respondent/Counter-Claimant

Oppenheimer & Co., Inc.

NATURE OF DISPUTE

Associated Person v. Member Firm and Member Firm vs. Associated Person

REPRESENTATION OF PARTIES

Mari McCain ("**McCain**" or "**Claimant**") was represented by Walter T. Weathers, Jr., Esq., Watt Beckworth Thompson & Henneman, L.L.P., Houston, Texas.

Oppenheimer & Co., Inc. ("**Oppenheimer**" or "**Respondent**") was represented by David R. Clouston, Esq., Patton Boggs LLP, Dallas, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about November 12, 2004. The Submission Agreement of Claimant was signed on or about November 10, 2004. Claimant's Response to Respondent's Amended Statement of Answer, Motion to Dismiss and Counterclaim was filed on or about May 9, 2005. Claimant's Motion for Leave to Amend the Statement of Claim was filed on or about March 2, 2005. Claimant's Amended Answer to Respondent's Motion to Dismiss was filed on or about March 8, 2005. Claimant's Amended Statement of Claim, Answer to Counterclaim and Response to Motion to Dismiss was filed on or about March 2, 2005.

A Statement of Answer, Motion to Dismiss and Counterclaim was filed by Respondent Oppenheimer on or about February 24, 2005. The Submission Agreement of Respondent was signed on or about February 17, 2005 by Eric J. Shames. Respondent's Reply to Claimant's Motion for Leave to Amend Statement of Claim was filed on or about March 21, 2005. Respondent's Amended Statement of Answer, Motion to Dismiss, and Counterclaim was filed on or about April 29, 2005.

CASE SUMMARY

Claimant asserted the following causes of action: breach of contract, wrongful termination, libel, slander, compensation and commissions. Claimant alleged that Respondent failed to furnish her a W-2 form for her employment as required by law, failed to pay her her owed commissions in a timely manner as required by law, and failed to reimburse her for expenses in a timely manner pursuant to law.

Unless specifically admitted in its Answer, Respondent denied the allegations made in the Statement of Claim and asserted affirmative defenses including the following: the Statement of Claim failed to state a claim upon which relief can be granted; Respondent has not breached any terms of the Agreement at issue in this matter; Respondent discharged its obligations in a professional and ethical manner, in good faith, and all actions were well within the parameters of the Agreement, and the applicable law and regulations; if Claimant sustained any damages, all of which are expressly denied, then such damages were not caused by Oppenheimer, but rather, were caused by persons, entities or matters beyond Oppenheimer's control, with no act or omission on the part of Oppenheimer contributing thereto.

In its Counterclaim, Oppenheimer alleged that McCain breached her Employment Agreement ("Agreement") and she must abide by the terms she agreed to in the Agreement.

Unless specifically admitted in her Answer to the Counterclaim, McClain denied the allegations and asserted affirmative defenses including the following: Oppenheimer has breached its duties to Claimant, committed negligence and gross negligence, and breached the contract with the Claimant; Oppenheimer's actions constitute negligence and gross negligence for which Claimant claims both affirmative relief and pleads such as an affirmative defense; Respondent failed to discharge their obligations, failed to act in good faith, and violated applicable law and regulations.

RELIEF REQUESTED

Claimant requested an award in the amount of \$2,000,000.00 in compensatory damages, \$1,000,000.00 in punitive damages, interest, costs and attorneys' fees and other relief the Panel deemed just and proper.

Respondent requested that the claims asserted against it be denied in their entirety and that it be awarded its costs and attorneys' fees and other relief the Panel deemed just and proper.

In its Counterclaim, Oppenheimer requested \$275,195.70 in compensatory damages.

OTHER ISSUES CONSIDERED & DECIDED

On or about May 25, 2005, the Panel entered an order in regard to Claimant's Motion for Leave to Amend the Statement of Claim and Respondent's Motion to Dismiss. The Panel granted Claimant's Motion for Leave to Amend the Statement of Claim. The Panel denied Respondent's Motion to Dismiss.

At the hearing, the Respondent orally moved for a Motion to Dismiss. The Panel denied the 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. 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, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claims, each and all, are dismissed in their entirety with prejudice;
- 2) Claimant, Mari McCain, is liable for and shall pay to Respondent, Oppenheimer & Co., Inc., the sum of \$60,000.00 in compensatory damages;
- 3) Other than Forum Fees which are specified below, the parties shall each bear their own costs and expenses incurred in this matter; and
- 4) Any relief not specifically enumerated, including punitive damages and attorneys' fees, is hereby denied with prejudice.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

NASD Dispute Resolution will retain the non-refundable filing fees for each claim:

Initial claim filing fee	= \$ 500.00
Counterclaim filing fee	= \$1,000.00

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 firm is Oppenheimer & Co., Inc.

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

Adjournment Fees

Adjournments granted during these proceedings:

November 8-11, 2005, adjournment requested by Claimant (waived by the Panel)	= \$ 1,200.00
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November 15-18, 2005, adjournment requested by Claimant and Respondent (\$600 each party)	= \$ 1,200.00
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March 28-31, 2006, adjournment requested by Claimant and Respondent (waived due to NASD Mediation)	= \$ 1,500.00
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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 arbitrators, including a pre-hearing conference with the arbitrators, that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Decision on discovery-related motion on the papers with one (1) arbitrator @ \$200.00 Claimant submitted one (1) discovery-related motion	= \$ 200.00
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Three (3) Pre-hearing sessions with Panel x \$1,200.00	= \$ 3,600.00
Pre-hearing conferences: March 23, 2005 1 session	
May 25, 2005 1 session	
October 31, 2005 1 session	

Nine (9) Hearing sessions x \$1,200.00	= \$10,800.00
Hearing Dates: May 30, 2006 2 sessions	

	May 31, 2006	2 sessions	
	June 1, 2006	2 sessions	
	June 2, 2006	3 sessions	
<hr/> Total Forum Fees			= \$14,600.00

The Arbitration Panel has assessed \$7,300.00 of the forum fees to Mari McCain.

The Arbitration Panel has assessed \$7,300.00 of the forum fees to Oppenheimer & Co., Inc.

Fee Summary

Claimant, Mari McCain, is liable for:

Initial Filing Fee	= \$ 500.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 7,300.00
Total Fees	= \$ 8,400.00
Less payments	= \$ 2,337.50
Balance Due NASD Dispute Resolution	= \$ 6,062.50

Respondent, Oppenheimer & Co., Inc., is liable for:

Counterclaim Filing Fee	= \$ 1,000.00
Member Fees	= \$ 8,550.00
Adjournment Fee	= \$ 600.00
Forum Fees	= \$ 7,300.00
Total Fees	= \$17,450.00
Less payments	= \$11,275.00
Balance Due NASD Dispute Resolution	= \$ 6,175.00

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

ARBITRATION PANEL

David G. Beerbower, Esq. - Public Arbitrator, Presiding Chair
William S. Hopkins - Public Arbitrator
Gregory E. Cater - Non-Public Arbitrator

Concurring Arbitrators:

/s/ David G. Beerbower, Esq.
David G. Beerbower, Esq.
Public Arbitrator, Presiding Chair

06/06/06
Signature Date

/s/ William S. Hopkins
William S. Hopkins
Public Arbitrator

06/08/06
Signature Date

/s/ Gregory E. Cater
Gregory E. Cater
Non-Public Arbitrator

06/06/06
Signature Date

06/09/06
Date of Service (For NASD office use only)

ARBITRATION PANEL

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William S. Hopkins - Public Arbitrator
Gregory E. Cater - Non-Public Arbitrator

Concurring Arbitrators:



David G. Beerbower, Esq.
Public Arbitrator, Presiding Chair

6/8/06

Signature Date

William S. Hopkins
Public Arbitrator

Signature Date

Gregory E. Cater
Non-Public Arbitrator

Signature Date

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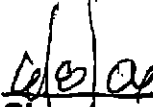


David G. Beerbower, Esq.
Public Arbitrator, Presiding Chair

Signature Date



William S. Hopkins
Public Arbitrator



Signature Date

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