

AWARD
NASD Dispute Resolution

In the Matter of the Arbitration Between

Names of Claimants

Joseph and Brenda Williams

and

05-02506
Kansas City, Missouri

Names of Respondents

American Century Investment Services, Inc.,
Oppenheimer & Co. Inc. and
Bradley Dean See

NATURE OF DISPUTE

Customer vs. Member and Associated Person

REPRESENTATION OF PARTIES

Joseph and Brenda Williams ("**Claimants**") were represented by Barry D. Estell, Esq., Mission, Kansas.

American Century Investment Services, Inc. ("**American Century**") was represented by J. Michael Vaughan, Esq. and David M. Skeens, Esq., Walters Bender Strohbein & Vaughan, P.C., Kansas City, Missouri.

Oppenheimer & Co. Inc. ("**Oppenheimer**") and Bradley Dean See ("**See**") were represented by Marvin G. Pickholz, Esq., Akerman Senterfitt LLP, New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about May 11, 2005. Claimants' Response to Respondents' Hearing Briefs was filed on or about August 14, 2006. The Submission Agreement of Claimants, Joseph and Brenda Williams, was signed on May 6, 2006.

Answer of American Century Investment Services, Inc. was filed on or about August 15, 2005. American Century Investment Services, Inc.'s Pre-Hearing Brief was filed on or about August 2, 2006. The Submission Agreement of Respondent, American Century Investment Services, Inc., was signed on June 29, 2005.

Statement of Answer and Motion to Dismiss on behalf of Respondents, Oppenheimer & Co. Inc. and Bradley Dean See, was filed on or about August 16, 2005. Pre-Hearing Memorandum of Respondents, Oppenheimer & Co. Inc. and Bradley Dean See, was filed on or about August 2, 2006. The Submission Agreement of Respondent, Oppenheimer & Co. Inc., was signed on June 15, 2005 by Eric J. Shames. The Submission Agreement of Respondent, Bradley Dean See, was signed on July 28, 2005.

CASE SUMMARY

Claimants asserted the following causes of action: fraud and misrepresentation; breach of fiduciary duty; breach of contract and violation of NASD and exchange rules; negligence; and negligent misrepresentation. Claimants alleged that

They were conservative, retired people when they went to American Century for advise [sic]. They were advised by an American Century representative to invest in mutual funds which were unsuitable given their age, financial status, and investment objective of retirement income. Their business was solicited by Respondent Brad See, a Fahnstock representative, to whom they transferred \$150,000 on his personal assurance that he could place their money in better investments than American Century funds. His recommendations were also unsuitable and were made utilizing misrepresentation and omissions of material fact. Claimants were not advised of the substantial risk involved by any of Respondents. When a registered representative recommends the purchase or sale of a security, he or she must not only avoid affirmative misstatements, but must also disclose material adverse facts about which the salesperson is, or should be, aware. [footnote omitted].

Respondent, American Century Investment Services, Inc., denied the allegations set forth in the Statement of Claim. Respondent American Century specifically stated:

Contrary to the contentions of the Williams, their losses at American Century were not due to any wrongdoing by American Century but were the result of the overall downturn in the equity markets coupled with Joe Williams' own decision to weight his investment portfolio heavily in growth funds. [footnote deleted] Like many investors, the Williams appear to have been blindly confident in the stock market after making substantial gains in the 1990's – just assuming that those gains would continue forever. This, of course, did not happen as the inevitable cyclical downturn took place, compounded by the terrorist attacks on September 11, 2001 and the resulting turmoil in the financial markets.

The Williams, however, bear particular culpability for these losses because of their refusal to follow the guidance by American Century and diversify the investments by moving some assets from the aggressive growth funds to a bond fund. Certainly they understood diversification as evidenced by the fact that they had some

investments with American Century in the Ginnie Mae Fund and the Prime Money Market fund. And certainly through common sense as well as their own prior experience in the Vista fund, they knew that they could lose money on their American Century investments. Nonetheless, the Williams consistently refused to follow the diversification guidance offered by Ms. Higgins. Despite deteriorating market conditions of which Mr. Williams was clearly aware, they remained steadfast in their desire to accept the higher risk of investing in growth funds with the hope of achieving higher returns.

The Williams' credibility is further diminished by their approach of presenting only a portion of the picture relating to their American Century investments. When viewed in total, without the "cherry picking," the net loss of the Williams while at American Century is not \$36,075.49 as they claim but just \$6,954.42.

Respondents, Oppenheimer & Co. Inc. and Bradley Dean See, denied the allegations set forth in the Statement of Claim. Respondents Oppenheimer & Co. Inc. and Bradley Dean See specifically stated:

Claimants were provided with fund prospectuses and fund performance results during one of many meetings with Mr. See in late April 2000, as well as throughout their tenure as shareholders. [citation omitted] Throughout the relevant period Mr. Williams contacted See or Goodwin numerous times a week by phone to discuss his portfolio's performance and account fees. Further, upon Mr. See's departure from Oppenheimer, Mr. Williams met with another registered representative to whom his accounts were assigned and asked many questions about account fees, contingent deferred sales charges and the like. Immediately thereafter, Mr. Williams contacted Goodwin stating that he was not interested in the new registered representative. The Williams then came in to meet with Mr. Goodwin and determined that they preferred to continue to deal with him, rather than another representative in the branch.

Mr. See contacted Claimants in November 2001 and suggested that they move their money out of the Alger Funds due to the uncertainty created by September 11, 2001. Mr. Goodwin also attempted to find alternative investments for Claimants, as a result of Mr. Williams' constant dissatisfaction with the performance of his portfolio. However, these recommendations were aimed to please the clients, *not* as means to generate commissions for Respondents. Notwithstanding the endless barrage of phonecalls from Claimants, they chose not to follow the recommendations of first See, and later Goodwin, as admitted in their Statement of Claim. Instead they chose to continue holding their positions, reaping the benefit of the rise in fund value which followed in 2003 and 2004. All the while, they continued to watch their accounts recover without ever voicing a complaint regarding their management.

RELIEF REQUESTED

Claimants requested an award as follows:

| | | |
|----------------------|----|-----------|
| Compensatory Damages | \$ | 82,586.50 |
| Interest | \$ | 0.00 |
| Attorneys' Fees | \$ | 0.00 |
| Other Costs | \$ | 0.00 |

Respondent, American Century Investment Services, Inc., requested that the Statement of Claim be dismissed with prejudice, that Claimants be awarded nothing and that it be awarded its costs, attorney's fees and expenses for this action, together with such other and further relief as the Arbitrators deem just and proper.

Respondents, Oppenheimer & Co. Inc. and Bradley Dean See, requested that the Arbitration Panel dismiss the Statement of Claim, submitted by Claimants Joseph Williams and Brenda Williams, in its entirety and that all costs, attorneys fees and disbursements be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

Respondents, Oppenheimer & Co. Inc.'s and Bradley Dean See's Motion to Dismiss is denied by the Arbitration Panel.

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 the NASD Dispute Resolution (the "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. Respondent, American Century Investment Services, Inc., is liable for and shall pay to Claimants Joseph and Brenda Williams the sum of \$20,000.00 (Twenty Thousand Dollars and No Cents) as compensatory damages;
2. Respondents, Oppenheimer & Co. Inc. and Bradley Dean See, are jointly and severally liable for and shall pay to Claimants Joseph and Brenda Williams the sum of \$15,000.00 (Fifteen Thousand Dollars and No Cents) as compensatory damages;

3. That to the extent not specifically awarded or otherwise provided for above, all other claims and requests for relief by any party hereto are denied with prejudice; and
4. Other than the Forum Fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including but not limited to attorneys fees, not specifically awarded or otherwise provided for above.

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 | \$ 225.00 |
|--------------------------|-----------|

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 American Century Investment Services, Inc. and Oppenheimer & Co. Inc.

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

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:

| | | | |
|-------------------------------------|------------|--------|-------------|
| 1 Pre-hearing session(s) with Panel | x | 750.00 | \$ 750.00 |
| November 1, 2005 | 1 session | | |
| 6 Hearing sessions | x | 750.00 | \$ 4,500.00 |
| August 29, 2006 | 2 sessions | | |
| August 30, 2006 | 2 sessions | | |

August 31, 2006 2 sessions
Total Forum Fees \$ 5,250.00

The Arbitration Panel has assessed \$1,750.00 of the forum fees jointly and severally to Joseph and Brenda Williams.

The Arbitration Panel has assessed \$1,750.00 of the forum fees to American Century Investment Services, Inc.

The Arbitration Panel has assessed \$1,750.00 of the forum fees jointly and severally to Oppenheimer & Co. Inc. and Bradley Dean See.

Fee Summary

Claimants, Joseph and Brenda Williams, are jointly and severally liable for:

| | | |
|-------------------------------------|------|-----------------|
| Initial Filing Fee | = \$ | 225.00 |
| <u>Forum Fees</u> | = \$ | <u>1,750.00</u> |
| Total Fees | = \$ | 1,975.00 |
| <u>Less payments</u> | = \$ | <u>-975.00</u> |
| Balance Due NASD Dispute Resolution | = \$ | 1,000.00 |

Respondent, American Century Investment Services, Inc., is liable for:

| | | |
|-------------------------------------|------|------------------|
| Member Fees | = \$ | 3,550.00 |
| <u>Forum Fees</u> | = \$ | <u>1,750.00</u> |
| Total Fees | = \$ | 5,300.00 |
| <u>Less payments</u> | = \$ | <u>-3,550.00</u> |
| Balance Due NASD Dispute Resolution | = \$ | 1,750.00 |

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

| | | |
|-------------------------------------|------|------------------|
| Member Fees | = \$ | 3,550.00 |
| Total Fees | = \$ | 3,550.00 |
| <u>Less payments</u> | = \$ | <u>-3,550.00</u> |
| Balance Due NASD Dispute Resolution | = \$ | 0.00 |

Respondents, Oppenheimer & Co. Inc. and Bradley Dean See, are jointly and severally liable for:

| | | |
|----------------------|------|-----------------|
| <u>Forum Fees</u> | = \$ | <u>1,750.00</u> |
| Total Fees | = \$ | 1,750.00 |
| <u>Less payments</u> | = \$ | <u>-0.00</u> |


Balance Due NASD Dispute Resolution = \$ 1,750.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

John R. Loss, Esq. - Public Arbitrator, Presiding Chair
Eric T. Williams, Esq. - Public Arbitrator
John E. Sundeen - Non-Public Arbitrator

Concurring Arbitrators:



John R. Loss, Esq.
Public Arbitrator, Presiding Chair

9/8/06

Signature Date

Eric T. Williams, Esq.
Public Arbitrator

Signature Date

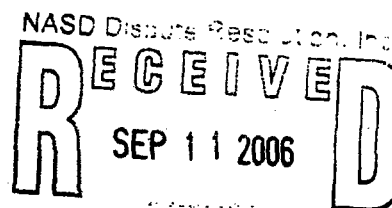
John E. Sundeen
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

67 A

NASD Dispute Resolution
Arbitration No. 05-02506
Award Page 7 of 7



Balance Due NASD Dispute Resolution = \$ 1,750.00

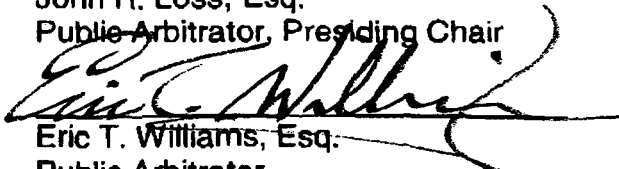
All balances are due to NASD Dispute Resolution

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John R. Loss, Esq. - Public Arbitrator, Presiding Chair
Eric T. Williams, Esq. - Public Arbitrator
John E. Sundeen - Non-Public Arbitrator

Concurring Arbitrators:

John R. Loss, Esq.
Public Arbitrator, Presiding Chair


Eric T. Williams, Esq.
Public Arbitrator

Signature Date

8 September 2006
Signature Date

John E. Sundeen
Non-Public Arbitrator

Signature Date

Date of Service (For NASD office use only)

NASD Dispute Resolution
Arbitration No. 05-02506
Award Page 7 of 7

Balance Due NASD Dispute Resolution = \$ 1,750.00

All balances are due to NASD Dispute Resolution

ARBITRATION PANEL

John R. Loss, Esq. - Public Arbitrator, Presiding Chair
Eric T. Williams, Esq. - Public Arbitrator
John E. Sundeen - Non-Public Arbitrator

Concurring Arbitrators:

John R. Loss, Esq.
Public Arbitrator, Presiding Chair

Signature Date

Eric T. Williams, Esq.
Public Arbitrator

Signature Date



John E. Sundeen
Non-Public Arbitrator

9/12/2006

Signature Date

Date of Service (For NASD office use only)