

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Gwenn C. Gamse, individually and      Claimant  
and as Trustee

vs.

Oppenheimer & Co., Inc.      Respondent

AWARD

CASE NO. 88-00966

SUMMARY OF ISSUES

This case was filed with the National Association of Securities Dealers, Inc. ("NASD") on March 25, 1988. Claimant alleged that Respondent breached the fiduciary duty owed to Claimant by recommending unsuitable investments and by engaging in a pattern of trading activity that was inconsistent with Claimant's expressed investment objectives of generation of income consistent with low risk.

Respondent denied the allegations and maintained that the recommended investments were suitable with Claimant's stated investment objectives to trade for profits, generate income and maintain safety of principal. Respondent further maintained that Claimant controlled the trading activity in the accounts and approved all the transactions.

DAMAGES AND RELIEF REQUESTED

Claimant requested damages, as amended at the hearing, in the Popper account in the amount of \$301,384.78, damages in the Gamse, Inc. account in the amount of \$451,292.00, punitive damages, interest from the date of loss, costs and reasonable attorneys' fees.

Respondent requested dismissal of the claim and costs.

DAMAGES AND RELIEF AWARDED

On March 1 and 2, 1990, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on March 14, 1988 and July 14, 1988, and by Respondent who confirmed at the hearing through its corporate representative that it submitted to the jurisdiction of this forum. The hearing was held in Los

Angeles, California and lasted five sessions. The arbitration panel, having considered the pleadings, the testimony, and the evidence presented at the hearing, has determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent is hereby liable for and shall pay to Claimant the sum of Fifty-Five Thousand, Nine Hundred Dollars (\$55,900.00) representing damages in the Gamse, Inc. account and Popper account.

2. The claim for punitive damages is dismissed.

3. All other claims are dismissed.

4. The parties shall each bear their respective costs including attorneys' fees.

5. Pursuant to Section 43 of the NASD Code of Arbitration Procedure, the NASD shall retain the \$750.00 filing fee previously deposited by the Claimant.

#### OTHER ISSUES

Claimant dismissed all claims against William Failla at the hearing.

The parties stipulated to the execution and service of the award in counterpart copies.

#### PRESIDING ARBITRATORS

DATE SERVED: 04/11/90

Thomas M. Adams  
Thomas M. Adams

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Robert G. Sether

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John B. Wells