

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

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In the Matter of the Arbitration Between )  
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GARRETT F.X. BEYRENT, )  
 ) Claimant, )  
 ) Case #89-01140  
vs. ) Final Order  
 )  
OPPENHEIMER & CO., INC., )  
 ) Respondent, )  
 )  
vs. )  
 )  
RHONDA FORD, PROFESSIONAL BROKERAGE SERVICES, )  
and DOUGLAS BREMEN & CO., )  
 )  
 ) Third Party Respondents. )  
 )  
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Heard before the members of the Arbitration Panel:

William A. Fleck, Esq.  
Mr. Harold Kramer  
Mr. Edward S. Boslow III

CASE SUMMARY

This claim was filed with the NASD, Inc. on April 14, 1989. The hearing was conducted in Fort Lauderdale, Florida on May 3, 1990, with a total of one session.

Claimant, Garrett F.X. Beyrent ("Beyrent"), alleged that Respondent, Oppenheimer & Co., Inc. ("OppCo"), was liable for unauthorized trades of certain stocks and failure to deliver a prospectus. Claimant alleged: breach of contract; conversion; negligence; fraud; breach of fiduciary duty; violations of the Securities Act of 1933; and violations of the Florida Securities and Investor Protection Act.

Respondent, OppCo, alleged that: Claimant has no basis for suit since he already recovered a judgment in Circuit Court against Rhonda Ford ("Ford"), Professional Brokerage Services, Inc. ("PBS") and Van Deusen & Co. ("Van Duesen"); Claimant's broker Ford was not employed by OppCo in any capacity; OppCo had no control over Ford or her activities; acted only as the clearing agent for Ford's employer; OppCo cannot be held liable for the actions of PBS or its employees; never received any instruction to reverse the trades complained of; was exempt from the prospectus delivery requirement of the Securities Act of 1933, since it was a seller of securities; and otherwise denied liability.

Respondent, OppCo, asserted a Third Party Claim against Ford, PBS, and Douglas Bremen & Co., Inc. ("DBC") for indemnification or contribution.

Respondent, PBS, answered the Third Party Claim by denying liability and alleged that: Ford was not employed by PBS; supervision of Ford was the responsibility of Van Deusen; Claimant has waived his right to use the NASD's arbitration facilities; is estopped from bringing his claim against OppCo since he has already obtained a judgment against Ford, Van Deusen, and PBS in the Circuit Court; and is exercising bad faith.

Respondents, Ford and DBC, failed to file an answer and did not appear at the hearing to defend.

#### RELIEF REQUESTED

Claimant requested damages in the amount of \$30,000.00 plus interest, attorney's fees and other costs. Respondent, OppCo, requested dismissal of the Claim and filed a Third Party Claim requesting indemnification or contribution. Third Party Respondent, PBS, requested dismissal of the Claim and Third Party Claim and asked that costs be assessed against the Claimant. Respondents, Ford and DBC, failed to file Answers and did not appear at the hearing to defend.

#### FINAL ORDER

On May 3, 1990, the arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on March 30, 1989; by Respondent, OppCo, on June 5, 1989; by Third Party Respondent, PBS, on March 22, 1990; and not signed by Third Party Respondents, Ford or DBC, as required pursuant to Section 12(a) of the NASD Code of Arbitration Procedure ("Code"). Third Party Respondent, Ford, being a person associated with an NASD member firm, and Third Party Respondent, DBC, being an NASD member firm, at the time this controversy arose. Having considered the pleadings, the testimony, and the evidence presented at the hearing, the arbitration panel has determined in full and final resolution of the issues submitted for determination as follows:

1. The Claimant, Respondent, OppCo, and Third Party Respondent, PBS, 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, they have agreed to receive conformed copies of the Award while the originals remain on file with the NASD, Inc.
2. Pursuant to Section 16 of the Code and Respondent, OppCo's Motion to Dismiss, the Claim against OppCo is hereby dismissed and the parties are referred to the remedies provided by applicable law.
3. Respondent/Third Party Claimant, OppCo's, Claim for indemnification or contribution against Third Party Respondents, Ford, PBS and DBC, is hereby rendered moot.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the Panel has assessed Claimant forum fees in the amount of Four Hundred and 00/100 (\$400.00) Dollars (\$400.00 x one session). The National Association of Securities Dealers, Inc. shall retain the Four Hundred and 00/100 (\$400.00) Dollar filing fee previously deposited by the Claimant in full satisfaction thereof.
5. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding, including attorney's fees.

#### OTHER ISSUES

Based upon the Panel's decision to grant Respondent, OppCo's, Motion to Dismiss, the Third Party Claim asserted by OppCo against Third Party Respondents, Ford, PBS and DBC, and PBS' related Motion to Dismiss are rendered moot. Therefore, the Panel did not reach the issues of PBS' Motion to Dismiss or whether Respondents, Ford and DBC, had adequate notice.

#### ARBITRATORS CONCURRING

William A. Fleck, Esq.  
Harold Kramer  
Edward S. Boslow III

Dated: May 31, 1990