

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Michael A. Geller

90-00664

Name of Respondent(s)

Oppenheimer & Co., Inc.
David Rhodes

Heard before:

Name	Public/Industry
Ted M. Rosen, Esq.	Public Arbitrator
Theodore Kimelman	Industry Arbitrator
Robert A. Castillo	Public Arbitrator

REPRESENTATION

The Claimant was represented by Paula G.A. Ryan, Esq. from the lawfirm of Parker Duryee Rosoff & Haft. The Respondents were represented by John T. McGuire, Esq. from Oppenheimer & Co., Inc.

CASE SUMMARY

Claimant, Michael A. Geller ("Claimant") alleged that Respondent, Oppenheimer & Co., Inc. and David Rhodes ("Respondents") acted negligently in the management of Claimant's account in that Respondents failed to promptly execute Claimant's first stop order and that Respondents failed to enter or/and to honor the second stop order. Claimant alleged that Respondents failed to act with due care and diligence in the management of Claimant's account, and in particular they failed to promptly inform Claimant that trading in Harcourt Brace Jovanovich ("HBJ") had ceased. Claimant alleged that Respondents made negligent misrepresentations in order to induce Claimant to purchase and repurchase HBJ. Claimant alleged that Oppenheimer & Co., Inc. ("Oppenheimer") was negligent in its supervision of its employee David Rhodes ("Rhodes"). Claimant alleged that the size of the transaction in HBJ was unsuitable for the Claimant as he was not a sophisticated investor.

Respondents maintained that they properly executed Claimant's stop loss order placed on Claimant's initial purchase of HBJ and maintained that Claimant did not place a stop loss order on HBJ after Claimant repurchased it. Respondents maintained that Rhodes attempted to reach Respondent to inform him that trading in HBJ had been halted. Respondents maintained that they

did not act negligently in executing orders for Claimant's account and that all losses resulting from the first stop order were justified. Respondents denied that it failed to comply with the second stop order and maintained that a second stop order was never placed. Respondent Oppenheimer maintained it properly supervised Rhodes and that Claimant was suitable for all transactions placed in his account.

RELIEF REQUESTED

Claimant requested monetary damages in the amount of \$506,964.42, plus interest thereon.

Respondents requested that Claimant's claim be denied in its entirety.

AWARD

On February 6, March 20, 21 and 22, and May 15, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, on February 21, 1990 by Respondent Oppenheimer & Co., Inc. on May 8, 1990 and by Respondent David Rhodes on May 9, 1990. The hearing was held in New York City and consisted of seven (7) hearing sessions.

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

1. That Respondent David Rhodes is liable to the Claimant and shall pay to the Claimant the sum of Forty Nine Thousand Nine Hundred Twenty One and 44/100 Dollars (\$49,921.44); no interest is awarded on this amount.
2. That Respondent Oppenheimer & Co., Inc. is liable to the Claimant and shall pay the Claimant the sum of Ninety Nine Thousand Eight Hundred Forty Two and 88/100 Dollars (\$99,842.88); no interest is awarded on this amount.
3. The parties shall each bear their respective costs, including attorneys' fees.
4. Pursuant to Section 43 of the Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. shall refund the \$750.00 of the \$1000.00 filing fee previously deposited by the Claimant. The Respondents are directed to refund to the Claimant the \$250.00 non-refundable filing fee.

FORUM FEES


Pursuant to Section 43(c) of the Code of Arbitration Procedure, Forum Fees in the amount of \$6000.00 are assessed against the Respondents.

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators Signature


Ted M. Rosen, Esq.


Theodore Kimalman


Robert A. Castillo

Date of Decision:

August 14, 1991

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators Signature

Ted M. Rosen, Esq.

Theodore Kimelman
Theodore Kimelman

Robert A. Castillo

Date of Decision: August 14, 1991

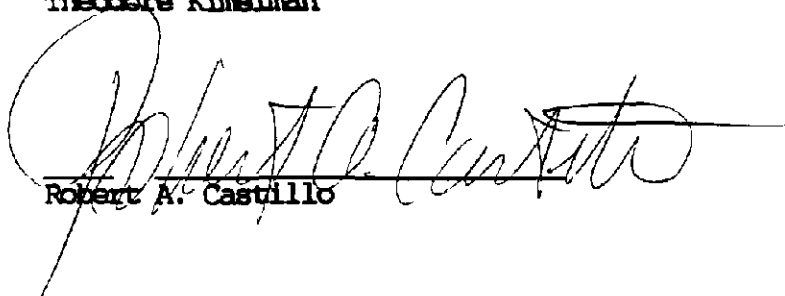
Page 3.
Award #90-00664

Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators Signature

Ted M. Rosen, Esq.

Theodore Kinselman


Robert A. Castillo

Date of Decision:

August 14, 1991

NASD[®]

Arbitration

STATE OF: New York
COUNTY OF: New York

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

On this 14th day of August, 1991, before me personally appeared Ted M. Rosen, Esq. known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

Sharon L. Sturm

SHARON L. STURM
NOTARY PUBLIC, State of New York
No. 4970893
Qualified in New York County
Term Expires August 20, 1992

STATE OF: New York
COUNTY OF: New York

S.S.:

On this _____ day of _____, 1991, before me personally appeared Theodore Kimelman known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: New York
COUNTY OF: New York

S.S.:

On this _____ day of _____, 1991, before me personally appeared Robert A. Castillo known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

NASD[®]

Arbitration

STATE OF: New York
COUNTY OF: New York

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

On this _____ day of _____, 1991, before me personally appeared **Ted M. Rosen, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 11th day of July, 1991, before me personally appeared **Theodore Kimelman** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

LARRIE LaCONTE
NOTARY PUBLIC, State of New York
No. 4867355
Qualified in Nassau County
Commission Expires August 18, 1992



STATE OF: New York
COUNTY OF: New York

S.S.:

On this _____ day of _____, 1991, before me personally appeared **Robert A. Castillo** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

NASD

Arbitration

STATE OF: New York
COUNTY OF: New York

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, New York 10004

On this _____ day of _____, 1991, before me personally appeared **Ted M. Rosen, Esq.** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: New York
COUNTY OF: New York

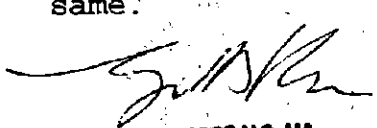
S.S.:

On this _____ day of _____, 1991, before me personally appeared **Theodore Kimelman** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.

STATE OF: New York
COUNTY OF: New York

S.S.:

On this 23rd day of July, 1991, before me personally appeared **Robert A. Castillo** known and known to me to be the individual described in and who executed the foregoing instrument and be duly acknowledged to me that he executed the same.


GEORGE H.S. MA
NOTARY PUBLIC, State of New York
No. 31-4715092
Qualified in New York County
Commission Expires July 31, 1992

