

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between )

Name of Claimant(s) )

David E. DeWitt )

Case No. 90-01523

Name of Respondent(s) )

Oppenheimer & Co., Inc. )

Lili Ann Alboum )

Kenneth Sussman )

Heard before the members of the Arbitration Panel:

Joseph L. Bernstein, Esq.

Public

Charles H. Brodzki, Esq.

Public

Herbert S. Karol

Industry

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on July 5, 1990. Claimant, David E. DeWitt ("DeWitt"), alleged that he was not experienced in options transactions; that Respondents, Oppenheimer & Co., Inc. ("Oppenheimer"), Lili Ann Alboum ("Alboum"), and Kenneth Sussman ("Sussman"), made misrepresentations of and omitted to state material facts; made unauthorized and fraudulent trades for Claimant's account in equity securities; recommended unsuitable transactions in options; and, refused to follow instructions regarding a stop loss; that Respondents' actions were willful and constituted violations of Section 10(b) of the Exchange Act; Section 772 (Civil Theft) and 517.301, Florida Statutes; fraud; breach of fiduciary duty; and, negligence.

In a Statement of Answer filed with the NASD on August 23, 1990, Respondents denied all allegations of wrongdoing and alleged that Claimant's investment objective was short term trading; that he was an experienced investor with a net worth of two million dollars; that Claimant executed a margin agreement; authorized and ratified all trades and the use of margin; and, that Respondents fully disclosed the risks of both margin and options.

RELIEF REQUESTED

Claimant requested damages in the amount of \$84,070.87 plus interest, attorney's fees, costs and punitive damages.

Respondents requested dismissal.

#### AWARD

On April 4 and 22, 1991, in Fort Lauderdale, Florida, during a hearing lasting four (4) sessions, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant, Dewitt, on June 27, 1990; by Respondent, Sussman, on August 31, 1990; by Respondent, Alboum, on April 4, 1991; and, on August 22, 1990, by John T. McGuire, on behalf of Respondent, Oppenheimer.

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. The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.
2. Respondent, Oppenheimer, is found liable and shall pay to Claimant the amount of \$8,772.00, plus interest at the legal rate of 12% per annum from November 17, 1989 to the date of Award in the amount of \$1,527.00, for a total due to the Claimant of \$10,299.00.
3. Respondents, Alboum and Sussman, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$2,924.00 plus interest at the legal rate of 12% per annum from November 17, 1989 to the date of Award in the amount of \$608.00, for a total due to the Claimant of \$3,532.00.
4. Claimant's requests for attorney's fees, costs, expenses, and punitive damages are denied.

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$2,000.00 (four sessions x \$500.00). Respondents, Oppenheimer, Sussman and Alboum, are hereby assessed \$2,000.00, jointly and severally, \$350.00 of which shall be paid directly to the Claimant, and \$1,650.00 of which shall be paid to the National Association of Securities Dealers, Inc.

2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

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

OTHER ISSUES

None.

Concurring Arbitrators' Signature

/s/  
Joseph L. Bernstein, Esq.

/s/  
Charles H. Brodzki, Esq.

/s/  
Herbert S. Karol

Date of Decision: APRIL 30, 1991