

Arbitration

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of  
Securities Dealers, Inc.  
One East Broward Boulevard  
Suite 1000  
Ft. Lauderdale, Florida 33301  
(305) 522-7391

In the Matter of the Arbitration Between)

Name of Claimant(s)

Edward H. Scarpitti

Case No. 90-01616

Name of Respondent(s)

Oppenheimer & Co., Inc.

Heard before the members of the Arbitration Panel:

George Felos, Esq.

Public

James F. Turner, III

Public

Jess G. Tucker

Industry

CASE SUMMARY

This matter was initiated by a Statement of Claim filed with the National Association of Securities Dealers, Inc. ("NASD") on June 11, 1990. Claimant, Edward H. Scarpitti ("Scarpitti"), alleged that Respondent, Oppenheimer and Co., Inc. ("OppCo"), was liable for: negligence; breach of fiduciary duties; violations of Florida Statutes Section, 517.301; and, negligent misrepresentation. Claimant alleged that: Respondents' employees misrepresented the safety of a certain limited partnership; misrepresented the expected return on Claimant's investment in said limited partnership; and such investment was not suitable for Claimant in light of Mr. Scarpitti's investment objectives.

In a Statement of Answer filed with the NASD on July 18, 1990, Respondent, OppCo., alleged that: Claimant understood the risks involved; OppCo. acted in good faith and provided an adequate system of internal control; Claimant was suitable for the investment; and an investor may not rely upon misrepresentations made by the broker which are inconsistent with written representations that the investor acknowledged. OppCo. asserted the affirmative defenses of: ratification; waiver; estoppel; statute of limitations; good faith; compliance with all industry rules and regulations; comparative negligence; and, failure to state a claim.

### RELIEF REQUESTED

Claimant requested damages in the amount of \$35,000.00, plus punitive damages, interest, costs and attorney's fees.

Respondents requested dismissal of the claim plus costs and attorney's fees.

### AWARD

On April 16, 1991, in Tampa, Florida, during a hearing lasting two (2) sessions with a pre-hearing conference on April 11, 1991, the undersigned arbitrators heard the controversy between the parties as set forth in submissions to arbitration signed by Claimant on June 5, 1990, and signed by Eugene Small on behalf of Respondent, OppCo. on July 16, 1990.

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, OppCo., is found liable and shall pay to the Claimant the amount of \$18,250.00, plus interest on \$17,500.00 at the legal rate of 12% per annum from June 24, 1986 to April 16, 1991 in the amount of \$10,114.52 for a total due to the Claimant of \$28,364.52.
3. Upon payment of the amount specified in paragraph #2, Claimant shall tender, and execute the necessary documents in order to transfer, to Respondent, OppCo., the Wend Co., Limited Partnership Security.
4. Claimant's requests for costs, punitive damages and attorney's fees are denied.
5. Respondent's request for costs and attorney's fees are denied.

### FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$1,100.00 (two sessions x \$400.00 per session plus \$300.00 for the pre-hearing conference on April 11, 1991). OppCo. is hereby assessed \$1,100.00 of which \$400.00 shall be paid directly to the Claimant as a return of his filing fee, and \$700.00 of which shall be paid to the National Association of Securities Dealers, Inc. The NASD, Inc., shall retain the \$400.00 previously deposited by the Claimant in partial satisfaction of such forum fees.

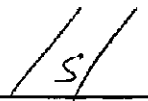
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding including attorney's fees.

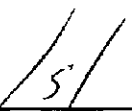
Fees are payable to the National Association of Securities Dealers, Inc.


OTHER ISSUES

1. Pursuant to Claimant's request, Respondents, Michael S. Gold and Jerry Gold, were dismissed without prejudice by the Panel on April 16, 1991, and removed from this case.

Concurring Arbitrators' Signature

  
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George Felos, Esq.

  
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James F. Turner, III

  
\_\_\_\_\_  
Jess G. Tucker

Date of Decision: May 16, 1991