

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Eugene and June C. Payne

90-02444

Name of Respondents

Oppenheimer & Co., Inc.,
Bateman Eichler, Hill Richards, Inc., and
John Beatty, Jr.

REPRESENTATION

Claimants, Eugene and June Payne were represented by Roger E. Jenne, Esq. of Jenne, Scott & Bryant, Cleveland, Tennessee.

Respondent, Oppenheimer & Co., Inc. was represented by John T. McGuire, Esq. of Oppenheimer & Co., Inc., New York, New York.

Respondent, Bateman Eichler, Hill Richards, Inc. was represented by Donald J. Aho, Esq. of Chambliss & Bahner, Chattanooga, Tennessee.

Respondent, John Beatty, Jr. did not file an appearance.

CASE INFORMATION

The Statement of Claim was filed with the NASD on September 4, 1990.

Claimant's Submission Agreement was signed on August 27, 1990 by Eugene and June Payne.

A Statement of Answer was filed with the NASD by Respondent, Oppenheimer & Co., Inc. on January 4, 1991.

Respondent, Oppenheimer & Co., Inc.'s Submission Agreement was signed on January 2, 1991 by John T. McGuire, Senior Vice-President.

A Statement of Answer was filed with the NASD by Respondent, Bateman Eichler, Hill Richards, Inc. on December 17, 1990.

Respondent, Bateman Eichler, Hill Richards, Inc.'s Submission Agreement

was signed on or about December 12, 1990 by William H. Phelps.

Respondent, John Beatty, Jr. did not file either an Answer to the Statement of Claim or an executed Submission Agreement with the NASD.

HEARING INFORMATION

The hearing took place on March 27, 1992 and lasted two hearing sessions.

The hearing location was Nashville, Tennessee.

CASE SUMMARY

Claimants, Eugene and June Payne ("the Paynes") alleged that Respondent, John Beatty, Jr., ("Beatty") advised the Paynes that he had a way to save the Paynes tax dollars on the Arco common stock Mr. Payne received when he retired from Arco in 1987. Beatty allegedly induced the Paynes to send their entire amount of Arco stock, 1075 shares, to Beatty and Respondent, Oppenheimer & Co., Inc. ("Oppenheimer"). Beatty then left the employ of Oppenheimer in or about May 1988 and went to work for Respondent, Bateman Eichler, Hill Richards, Inc. ("Bateman Eichler"). The Paynes asserted that Beatty, Oppenheimer and Bateman Eichler engaged in excessive trading in their securities account to the detriment of the Paynes. This excessive trading was alleged to have been a breach of fiduciary duty, a disregard of the Paynes' investment objectives and a willful scheme to defraud the Paynes. The conduct alleged by the Paynes was asserted to be violative of federal and state securities laws.

Oppenheimer denied the allegations of the Claim and asserted that the Paynes actually made money while their account was at Oppenheimer for a short period of six months.

Bateman Eichler also denied the allegations of the Claim and asserted that the Paynes received confirmations of the trading in their account. Bateman Eichler asserted that the Paynes had knowledge of, consented to, directed and/or otherwise authorized all trades in their account.

Beatty did not file an answer to the claims asserted by the Paynes.

RELIEF REQUESTED

The Paynes requested \$45,000.00 compensatory and punitive damages, jointly and severally, from all Respondents and a reasonable attorney's fee.

Oppenheimer requested dismissal of the Claim in its entirety.

Bateman Eichler requested dismissal of the Claim in its entirety and

for an award of its attorney's fees.

Beatty did not file an Answer with an affirmative relief request for the arbitrators to consider.

OTHER ISSUES CONSIDERED & DECIDED

The parties present at the hearing 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, the parties present at the hearing have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

The arbitrators determined to proceed with the hearing pursuant to Section 29 of the NASD Code of Arbitration Procedure ("NASD Code") in the absence of Respondent, Beatty. The panel determined that Beatty was obligated to arbitrate this dispute pursuant to Section 12 of the NASD Code and will be bound by the panel's decision on all issues submitted for determination.

Prior to the hearing in this matter, the arbitration panel considered requests by Bateman Eichler and Oppenheimer to file counterclaims against the Paynes. Both of these requests were denied in accordance with the panel's authority set forth in Section 39 of the NASD Code.

AWARD

After considering the pleadings, the testimony, the evidence presented at the hearing and post-hearing closing argument and briefs submitted by the Paynes, Oppenheimer and Bateman Eichler, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The claims asserted by the Paynes against Oppenheimer are denied and dismissed in their entirety;
2. Beatty is liable for and shall pay to the Paynes, without interest, the sum of thirty thousand dollars and no cents (\$30,000.00);
3. Bateman Eichler is directed to return 1075 shares of Arco common stock to the Paynes and cancel the outstanding margin debt existing in the Payne's account;
4. The Payne's claims for an award of punitive damages from all Respondents is denied; and,
5. The parties shall each bear their own costs, expenses and attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed. The NASD shall retain the \$120.00 claim filing fee and the hearing session deposit of \$400.00 paid to the NASD by the Paynes. Bateman Eichler is assessed and shall pay to the NASD additional Forum Fees of \$400.00 and shall directly reimburse the Paynes for the \$520.00 in fees retained by the NASD. No additional Forum Fees are assessed against Beatty or Oppenheimer. The NASD shall also retain the \$400.00 postponement fee paid to the NASD by Bateman Eichler.

Forum Fees were assessed on the basis of \$400.00 per hearing session for two hearing sessions. Additional Fees assessed are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures


Name


Charles Galbreath, Esq.
Presiding Chairman/Public Arbitrator

6/2/92
Dated


David N. Binn, Esq.
Panelist/Public Arbitrator

6/2/92
Dated


Doug Phillips
Panelist/Industry Arbitrator

6-2-92
Dated

Date Award Served by the NASD:

6-9-92