

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

John Foxley, Trustee of Alco
Spring Industries, Pensions
Plans for Hourly Rate and
Salaried Employees

No. 91-01036

Name of Respondents

Oppenheimer & Company

REPRESENTATION OF PARTIES

For Claimants: Michael T. Hannafan, Esq. of Michael T. Hannafan & Associates, LTD., Chicago, Illinois.

For Respondents: Eugene L. Small, Esq. of Oppenheimer & Company, New York, New York.

CASE INFORMATION

Statement of Claim filed: April 3, 1991.

Claimants' Submission Agreement signed on: March 22, 1991.

Statement of Answer filed by Respondent, Oppenheimer & Company on: August 2, 1991.

Respondent Oppenheimer & Company's Submission Agreement signed on: August 2, 1991.

HEARING INFORMATION

Pre-Hearing conference date: April 23, 1992. One (1) session.

Hearing date(s): April 28, 1992 for two (2) sessions.
April 29, 1992 for two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant John Foxley, Trustee of Alcoa Spring Industries, Inc., Pension Plans for Hourly rate and Salaried Employees ("Foxley") alleged that:

1. During the 1980's Foxley as trustee established trading accounts for both the Alcoa Hourly and Salaried Plans with Respondent Oppenheimer & Company, Inc. ("Oppenheimer");
2. Richard Peloquin ("Peloquin") acted as the broker and Oppenheimer's representative with respect to each plan and Peloquin knew that any trades or trade recommendations had to be conservative and low risk;
3. In October 1989, Foxley reasonably relied on Peloquin's advice and certain representations made concerning the backing of the bonds, and invested in Eastern bonds which ceased paying interest and went in default within a year of purchase;
4. Peloquin knew or should have known that the Eastern bonds that he recommended were inappropriate and inconsistent with Foxley's investment objectives;
5. As a result, Peloquin's actions caused the Alcoa Plans to lose \$79,200.00 plus interest from October 30, 1989 to present;
6. Peloquin's actions were willful and reckless because he knew or should have known that the Eastern bonds were not secured in any way and represented a high degree of risk and speculation.

Respondent Oppenheimer & Company, Inc. denies the allegation of wrongdoing contained in the statement of claim and further denies that it is liable to Claimant for any monetary damages. In addition, Respondent Oppenheimer asserted the following affirmative defenses:

1. Claimant authorized, consented to or acquiesced in the execution of each transaction in his accounts and is, therefore, equitably estopped from bringing this action;
2. Claimant has waived any and all claims by continuing to pursue an investment strategy after acquiring actual knowledge of the nature of the strategy;
3. Claimant, by failing to timely object to the transactions complained about, has ratified each and every transaction and is barred from recovery herein;
4. Claimant was fully aware of the risks and by failing to exercise due care proximately caused any losses sustained;
5. By failing to exercise the degree of care over his affairs and investments which an ordinary, prudent investor would exercise, any losses sustained by Claimant were proximately caused by his own conduct and negligence in relation to the transactions complained of and therefore he is precluded from recovery herein.

6. Claimant received confirmation slips for each and every transaction in his account and he failed to notify Respondent Oppenheimer of his dissatisfaction or to change his investment strategy.

RELIEF REQUESTED

Claimant John Foxley as Trustee of the Alco Hourly and Salaried Plans requests:

1. Plans be awarded \$79,200.00 in compensatory damages plus interest;
2. Plans be awarded at least \$100,000 in punitive damages and attorneys' fees.

Respondent Oppenheimer requested that Claimant's claim be dismissed in its entirety and that the costs of this proceeding be assessed fully against the Claimant.

OTHER ISSUES

The parties have agreed that the Award in this matter may be executed by counterpart copies or that a handwritten, signed Award may 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.

AWARD

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

1. Claimant, John Foxley's (Trustee of Alco Spring Industries, Pensions Plans for Hourly Rate and Salaried Employees) claim is denied and dismissed with prejudice.
2. Each party shall bear their own costs of this arbitration.

FORUM FEES

Pursuant to Section 43 (c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

1 pre-hearing conference session X \$ 300.00 = \$300.00

4 hearing sessions X \$750.00 = \$3,000.00

Pursuant to Section 43(c) of the Code of Arbitration, the NASD shall retain the nonrefundable filing fee in the amount of \$200.00, and shall retain the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Additional forum fees in the amount of \$2,550.00 are assessed against the Claimant John Foxley, Trustee of Alco Spring Industries, Pension Plans for Hourly Rate and Salaried Employees.

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

CONCURRING ARBITRATORS

Dated:

June 4, 1992

/s/Steven A. Bloomberg
Steven A. Bloomberg
Presiding Chair
Public Arbitrator

June 5, 1992

/s/Richard Zachary
Richard Zachary
Public Arbitrator

June 8, 1992

/s/Kelley Beach
Kelley Beach
Industry Arbitrator