

N.A.S.D. AWARD

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

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of, the Arbitration Between

Name of Claimant(s)

Ellen Curotto

91-01656

Name of Respondent(s)

Oppenheimer & Co., Inc.
Paul Efron
Robert B. Hord
Kenneth Sussman
Alan Holsman

REPRESENTATION

For Claimant, Ellen Curotto ("Curotto"): Kal Nekvasil, Esq. of Goodman & Nekvasil, P.A.

For Respondents, Kenneth Sussman ("Sussman"), Oppenheimer & Co., Inc. ("Oppco"), Paul Efron ("Efron"), Alan Holsman ("Holsman") and Robert Hord ("Hord"): Eugene Small, Esq. of Oppco.

CASE INFORMATION

Statement of Claim filed: May 28, 1991 and Amended July 10, 1991. Claimant's Submission Agreement signed: July 16, 1991.

Respondents' Statement of Answer filed: August 9, 1991. Respondents' Submission Agreements signed: July 30, 1991 by Hord, and on August 9, 1991 by Eugene Small on behalf of Oppco.

Respondents', Efron, Sussman and Holsman, did not sign Submission Agreements as required by Sections 12 and 25 of the Code, (See Other Issues).

HEARING INFORMATION

On March 10 and September 1, 1992, in Tampa, Florida, Pre-hearing Conferences lasting 2 sessions were conducted via telephone conference call with an arbitrator.

CASE SUMMARY

Claimant alleged that Respondents were liable for: Violation of Chapter 517 Florida Statutes; common law fraud; intentional breach of fiduciary duty; negligence; gross negligence; and violation of Chapter 812 Florida Statutes. Claimant alleged that Respondent, Efron, purchased unsuitable stocks for Claimant's account and made purchases on margin without having a signed margin agreement from Claimant and without advising Claimant of the risks of investing in margin; and, churned the account.

Respondents denied all allegations of wrongdoing and alleged that: Claimant wanted to incur some risk in pursuit of capital appreciation; there was no churning of the account; Claimant was aware that she was trading on margin; Claimant's account was not discretionary; there was no breach of fiduciary duty; and, each trade was discussed with Claimant prior to execution.

Respondents alleged the affirmative defenses of: estoppel; waiver; failure to timely object; failure to mitigate damages; ratification; and, laches.

RELIEF REQUESTED

Claimant requested damages in the amount of \$58,357.42 plus interest, costs, attorney's fees and treble damages.

Respondents requested dismissal of the claim plus costs.

OTHER ISSUES CONSIDERED & DECIDED

1. On July 12, 1991 and June 22, 1992, Claimant dismissed, with prejudice, her claims against Respondents, Sussman and Holeman, respectively, and, therefore, no Award is made as to those Respondents.
2. This panel finds that Respondents, Efron, Sussman and Holeman were required to sign Submission Agreements pursuant to Section 12 of the Code of Arbitration Procedure and pursuant to the forms U-4 executed by Efron, Sussman and Holeman, Respondents, Efron, Sussman and Holeman being persons associated with an NASD member firm, Oppco, at the time this controversy arose.
3. The parties 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 have agreed to receive conformed copies of the Award while the original(s) remain on file with the NASD.

AWARD

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. Respondent, Hord, is found not liable and, therefore, all claims against him are hereby dismissed.
2. Respondents, Oppco and Efron, are found liable, jointly and severally, and shall pay to the Claimant the amount of \$23,000 inclusive of interest.
3. Respondents, Oppco and Efron, are also found liable, jointly and severally, and shall pay to the Claimant the further amount of \$7,500.00 for attorney's fees pursuant to Section 517.211, Florida Statutes. This Panel bases its authority to Award attorney's fees on the Federal Arbitration Act and the case law interpreting that Act.
4. Claimant's request for treble damages is denied.
5. Respondents' request for costs is denied.

OTHER COSTS

1. Respondents, Oppco and Efron, are also found liable, jointly and severally, for costs of production, expert witness and other miscellaneous costs and shall pay to Claimant the further amount of \$2,500.00.
2. The parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

1. Pursuant to Section 43(c) of the Code of Arbitration Procedure, the Panel has assessed forum fees in the amount of \$3,600.00 (2 pre-hearing conferences x \$300.00 per conference plus 4 sessions x \$750.00 per session).
2. Respondents, Oppco and Efron, are hereby assessed \$3,600.00, jointly and severally, \$750.00 of which shall be paid directly to the Claimant, and \$2,850.00 of which shall be paid to the National Association of Securities Dealers, Inc.
3. The NASD shall retain the non-refundable filing fee of \$200.00 paid by the Claimant.

4. Respondents, Oppco and Efron, shall jointly and severally reimburse the Claimant \$200.00 for the non-refundable filing fee.

5. The NASD shall retain the session deposit of \$750.00 paid by Claimant in partial satisfaction of such forum fees.

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

Concurring Arbitrators' Signatures

Name	Public/Industry
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<u>/s/</u> George Felos, Esq.	Public
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<u>/s/</u> Bruce W. Harting	Public
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<u>/s/</u> Harold C. Anders	Industry
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Date of Decision: October 30, 1992