

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

James Calger

No. 91-03983

Name of Respondent

Oppenheimer & Co., Inc.

REPRESENTATION OF PARTIES

For Claimant: Richard N. Kessler, Esq., Chicago, Illinois.

For Respondent: M. David Hyman, Esq., Ridgewood, New Jersey.

CASE INFORMATION

Statement of Claim filed: December 16, 1991.

Claimants' Submission Agreement signed on: December 11, 1991.

Statement of Answer filed by Respondent, Oppenheimer & Co., Inc.
on: April 13, 1992.

Respondent Oppenheimer & Co., Inc.'s Submission Agreement signed
on: April 10, 1992.

HEARING INFORMATION

Pre-Hearing conference date: October 2, 1992. One (1) session.

Hearing date: November 17, 1992. Two (2) Sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant James Calger ("Claimant") alleged violation of Rule 10(b)-5 of the Securities Exchange Act of 1934; violation of the Illinois Securities Act; breach of fiduciary duty; breach of contract; and fraud by Respondent Oppenheimer & Co., Inc. ("Respondent"). The allegations arose out of trading in the following securities: 101 units of a Municipal Investment Trust; 6,000 shares of MidSouth Corporation ("MidSouth"); 2,500 shares of Occidental Petroleum ("Occidental"); 4,566 shares of Kemper Diversified Income Fund; 2,324 shares of American Capital Governmental Securities; and 595 shares of Putnam High Yield Trust. Claimant went on to allege that the trades in Occidental and MidSouth were unauthorized. Claimant further alleged that, upon timely notification of Claimant's objection to the trades, neither the broker handling the account, nor the Respondent made any attempt to correct the trades.

In its Answer, Respondent denied each and every allegation contained in the Statement of Claim. In addition, Respondent set forth the following affirmative defenses:

1. Claimant had failed to mitigate his damages by selling those securities he did not wish to own and repurchasing those he did. Claimant had learned of the trade in July of 1990, yet, had not sold the disputed shares until sometime after he had closed his account with Respondent in October of 1990.

RELIEF REQUESTED

For counts I through IV of the Statement of Claim, Claimant requested an Award of \$59,539.01 plus interest and costs.

For count V of the Statement of Claim, Claimant requested an Award of \$59,539.01 plus interest and costs and punitive damages in the sum of \$100,000.00.

Respondent requested that the complaint be dismissed in its entirety, and that costs be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

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. Respondent, Oppenheimer & Co., Inc. is liable for, and shall pay to Claimant, James Calger, the sum of \$38,825.00 plus interest at the rate of six (6%) percent per annum from November 7, 1990, until paid, as satisfaction of all of his claims herein.
2. Claimant James Calger's request for punitive damages is hereby denied and dismissed with prejudice.
3. Each party shall pay its own costs and attorneys' fees incurred in this matter, except as set forth more fully below.

FORUM FEES

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

- 1 pre-hearing conference session X \$300.00 = \$300.00
- 2 hearing sessions X \$750.00 = \$1,500.00

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

Pursuant to Sections 43(c) and 30(b) of the Code, Respondent is liable for, and shall pay to the NASD postponement fees in the amount of \$750.00.

Additional forum fees in the amount of \$1,800.00 are assessed against Respondent.

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

CONCURRING ARBITRATORS

Dated:

November 25, 1992

/s/Richard Clemens
Richard Clemens
Presiding Chair
Public Arbitrator

November 25, 1992

/s/Stuart D. Summers
Stuart D. Summers
Public Arbitrator

November 30, 1992

/s/James V. Kresl
James V. Kresl
Industry Arbitrator

Date of Service by the NASD:

December 1, 1992