



N.A.S.D. AWARD

Arbitration

NATIONAL ASSOCIATION OF SECURITIES DEALERS

National Association of
Securities Dealers, Inc.
NASD Financial Center
33 Whitehall Street
New York, N.Y. 10004
FAX (212) 858-4389

In the Matter of the Arbitration Between

Name of Claimant

Phyllis E. Wells

92-00195

Name of Respondents

Oppenheimer & Co., Inc.
Joe O. Wells

REPRESENTATION

For Claimant Phyllis E. Wells ("Claimant"): Thomas M. Spetnagel, of Spetnagel & Benson.

For Respondent Oppenheimer & Co. ("Oppenheimer"): John T. McGuire, of Oppenheimer.

For Respondent Joe O. Wells ("Wells"): Richard G. Ward, of Ward Kallenberger et al.

CASE INFORMATION

Statement of Claim filed: January 21, 1992.

Claimant's Submission Agreement signed on: January 8, 1992.

Statement of Answer filed by Respondent Oppenheimer on: February 26, 1992.

Respondent Oppenheimer's Submission Agreement signed on: February 25, 1992.

Statement of Answer filed by Respondent Wells on: March 20, 1992.

Respondent Wells's Submission Agreement signed on: September 8, 1992.

HEARING INFORMATION

Hearing Date/Session: September 1, 1992/2 sessions.

Hearing Location: Columbus, OH.

CASE SUMMARY

Claimant alleged on or about November 21, 1988, she and her former husband, Respondent Wells opened a securities account at Oppenheimer. Claimant alleged that on or about February 28, 1989, she joined Oppenheimer in a divorce action against Wells and obtained a Restraining Order which prohibited Wells from engaging in any trading activity in said securities account. Claimant alleged on or about March 14, 1989, Oppenheimer acknowledged receipt of the Restraining Order, represented to Claimant it

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would continue to honor the terms of said Order, and that if Claimant would lift the Restraining Order, it would disclose any contemplated trading activity in the account and obtain Claimant's approval prior to entering into any transactions in said account. Claimant alleged that on or about April 12, 1989, Claimant lifted said Restraining Order subject to the conditions that any transactions made in the securities account be disclosed by Oppenheimer to Claimant and approved by her and that Oppenheimer represented to Claimant it would obey said instructions. Claimant alleged that on September 20, 1989, Oppenheimer sold certain securities in Claimant's account and purchased United Airlines Warrants and neither disclosed the contemplated trading activity to Claimant nor obtained her approval prior to engaging in this transaction. Claimant alleged her interest in United Airlines securities decreased in value due to market events on or about October 13, 1989. Claimant alleged she suffered trading losses as a result of Oppenheimer's breach of its contractual and fiduciary duties and failure to follow Claimant's instructions.

Respondent Oppenheimer admitted it received, on or about March 14, 1989, a copy of the Restraining Order and at the specific request of Claimant and Walls, Oppenheimer acknowledged it would continue to trade the account at the direction of Walls, and would advise Claimant of such trading. Oppenheimer stated this agreement was acceptable to Claimant and her counsel. Oppenheimer acknowledged Claimant agreed to the modification of the Restraining Order.

Oppenheimer admitted it informed Claimant that if Walls contemplated certain trading in the account, she would be advised, and was advised prior to all trading in the account. Oppenheimer maintained that on or about September 20, 1989, Walls directed Oppenheimer to enter a United Airlines option spread; denied it did not inform Claimant of the anticipated trade; stated that the account executive of record, Jed Berman, spoke with Claimant informing her of the anticipated United Airlines trade; and that according to Berman's recollection, Claimant did not object to it. Oppenheimer denied it breached any contractual or fiduciary duty or failed to follow Claimant's instructions and that the losses were the result of adverse market movement and were unrelated to its actions.

Oppenheimer asserted a Third Party Claim against Walls alleging that it was he and not Oppenheimer or Berman who controlled the trading in this account; it was Walls' specific authorization to enter the United Airlines spread and as a result, if any entity or individual is responsible for the losses in the account, it is Walls.

Respondent Walls denied he controlled the trading in this account; at all relative times it was a joint account with Claimant and control was limited

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by Orders issued by the Common Pleas Court of Ross County, Ohio.

Wells admitted he conditionally authorized the United Airlines spread in September, 1989, but cautioned Oppenheimer of the requirement that it obtain the prior consent of Claimant. Wells denied he was responsible for Claimant's losses.

Wells asserted a Counterclaim against Oppenheimer in which he adopted each allegation contained in Claimant's Statement of Claim; stated that as a result of Oppenheimer's breach of its contractual and fiduciary duties and failed to follow his instructions, Wells suffered losses.

RELIEF REQUESTED

Claimant requested: judgment against Oppenheimer for her compensatory damages in the amount of \$54,912.72; prejudgment interest; commission charges; and costs.

Respondent Oppenheimer requested: this matter be dismissed in its entirety or, in the alternative, Wells be obligated to pay to Claimant the \$50,000.00 lost.

Respondent Wells requested: Oppenheimer's Third Party Claim be dismissed and that Oppenheimer be obligated to pay to Wells his compensatory damages, including the sum of \$54,912.72, plus interest; and commission charges.

OTHER ISSUES CONSIDERED & DECIDED

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 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 is liable and shall pay to Claimant the sum of \$12,060.43;
- 2- Respondent Oppenheimer's claim against Respondent Joe O. Wells is dismissed;
- 3- Respondent Joe O. Wells' claim against Respondent Oppenheimer is dismissed;

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- 4- All other claims are dismissed;
- 5- Each party shall bear its own costs, including attorneys' fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the NASD shall retain the \$150.00 and \$500.00 non-refundable filing fees previously paid by Claimant and Oppenheimer, respectively, and the following Forum Fees are assessed.

2 sessions X \$500.00 = \$1,000.00

Forum fees Assessed Against:

- 1- Respondent Joe O. Walls, in the amount of \$1,000.00. However, in lieu of payment to the NASD, Walls shall reimburse Claimant and Oppenheimer the amount of \$500.00 each, said amounts representing the hearing session deposits previously paid by Claimant and Oppenheimer;
- 2- The NASD shall refund the sum of \$100.00 to Respondent Oppenheimer, said amount shall represent the amount in excess of \$500.00 which Oppenheimer previously paid to the NASD as a hearing session deposit.

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

Arbitrator Signature



W. Sean Kelleher/Public Arbitrator

Date of Decision: September 25, 1992

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- 4- All other claims are dismissed;
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Bert C. Kinder/Public Arbitrator

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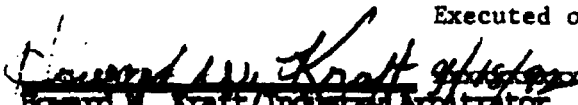
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Arbitrator Signature

Executed on:


Howard W. Kraft/Industry Arbitrator

Date of Decision: September 25, 1992