

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant
Fritz Vogelman

No. 92-00511

Name of Respondents
Oppenheimer & Co., Inc.
John Galinsky

REPRESENTATION

For Claimant: Paul J. Sussman, Esq. of Chicago, Illinois.

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

CASE INFORMATION

Statement of Claim filed: February 10, 1992.

Claimant's Submission Agreement signed on: February 6, 1992.

Joint Statement of Answer filed by Respondents, Oppenheimer & Co., Inc. and John Galinsky on: April 20, 1992.

Respondent Oppenheimer & Co. Inc.'s Submission Agreement signed on: April 16, 1992.

Respondent, John Galinsky has failed to file a Submission to Arbitration.

HEARING INFORMATION

Hearing Date: October 12, 1991. Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimant Fritz Vogelmen ("Claimant") alleged improper short sales, failure to close out positions, unsuitability, misrepresentations and omissions, breach of fiduciary duty, failure to supervise, violations of Anti-Fraud provisions of the Securities Acts, violation of 18 U.S.C. Sections 1341, 1343, 1961(4), 1962(a) and (c), and 1961(a) and (c) by Respondents Oppenheimer & Co. Inc. ("Oppenheimer") and John Galinsky ("Galinsky"). The allegations arose out of a short sale of Vista Chemical Company stock in October of 1990.

In their joint statement of answer, Respondents Oppenheimer and Galinsky denied the allegations set forth in the Statement of Claim. In addition, Respondents Oppenheimer and Galinsky set forth the following affirmative defenses:

1. Claimant had failed to mitigate his damage by covering the short position as soon as he realized that the position entailed significant risk. Had Claimant taken such action, his loss on the trade would have been minimal.
2. Claimant's conduct in maintaining the short position long after the time he realized that it carried significant risk constituted ratification and acceptance of the risk inherent in selling short.
3. Claimant's complaint contains only two allegations, both of which are deficient as a matter of law. Claimant had not properly pleaded a cause of action under RICO for numerous reasons, the most evident of which is that only one alleged violative act was plead and RICO requires a showing of two violations. Further, the Mail Fraud statute alluded to 18 U.S.C. 1341, is a criminal statute and does not give rise to a private cause of action.

RELIEF REQUESTED

Claimant requested:

- (a) Compensatory damages for all loss Claimant suffered as a result of Respondents' misconduct;
- (b) Any additional and consequential damages Claimant may establish at the arbitration hearing, including treble damages;

- (c) Interest at the legal rate, forum fees, attorneys' fees and costs; and
- (d) Other proper and just relief.

Respondents Oppenheimer and Galinsky requested that the complaint in this matter be in all respects dismissed and that the cost be assessed against Claimants.

OTHER ISSUES CONSIDERED & DECIDED

Respondent John Galinsky did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to Section 12 of the Code and having answered the claim, appeared and testified at the hearing and therefore is bound by the determination of the arbitration panel on all issues submitted.

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 undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Oppenheimer & Co., Inc. and John Galinsky are jointly and severally liable for, and shall pay to Claimant, Fritz Vogelmann, the sum of \$25,000.00 as satisfaction of his claims herein.
2. Each party shall pay their own attorneys' fees and costs of this arbitration.
3. Claimant Fritz Vogelmann's claim for damages under RICO is hereby denied and dismissed with prejudice.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

2 sessions X \$750.00 = \$1,500.00

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 refund the hearing session deposit in the amount of \$750.00 previously paid to the NASD by the Claimant.

Forum fees in the amount of \$1,500.00 are assessed jointly and severally against the Respondents.

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

By The Arbitration Panel:

Dated:

James F. Carlson /s/
James F. Carlson
Presiding Chair
Public Arbitrator

October 12, 1992

Stephen W. Balek /s/
Stephen W. Balek
Public Arbitrator

October 12, 1992

Carmen P. Michelotti /s/
Carmen P. Michelotti
Industry Arbitrator

October 12, 1992

Date of service by the NASD:

October 16, 1992