

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Charles H. Wilkinson & Harry Taylor

92-00636

Name of Respondents

PaineWebber Incorporated
Oppenheimer & Co., Inc.

REPRESENTATION

For Claimants: Charles H. Wilkerson and Harry Taylor were represented by Stuart C. Goldberg, Esq., of the Law Offices of Stuart C. Goldberg, Esq., located in Austin, Texas.

For Respondents: Oppenheimer & Co., Inc. was represented by Joseph C. Pickard, Esq. of Oppenheimer & Co., Inc., located in New York, New York.

PaineWebber Incorporated was represented by George C. Freeman III, Esq. and Alex J. Peragine, Esq. of Stone, Pigman, Walther, Wittman & Hutchins, located in New Orleans, Louisiana.

CASE INFORMATION

Statement of Claim filed: February 21, 1992.

Claimants' Submission Agreement signed on: February 6, 1992.

Statement of Answer filed by Respondent Oppenheimer & Co., Inc. on: May 20, 1992.

Respondent Oppenheimer & Co., Incorporated's Submission Agreement signed on: May 20, 1992 by Joseph C. Pickard, Vice President, Oppenheimer & Co., Inc.

Statement of Answer of Respondent PaineWebber Incorporated filed: April 28, 1992.

Respondent PaineWebber Incorporated's Submission Agreement signed on: April 28, 1992 by Joseph F. Generelli, Corporate Vice President and Assistant General Counsel, PaineWebber, Inc.

Claimants' Motion to Bar Defense by Oppenheimer filed: May 13, 1992.

HEARING INFORMATION

Pre-Hearing Conference: Held November 11, 1992 for One (1) session before Arbitrator William D. Hawkland, Jr.

Hearing Dates/Sessions: November 17, 1992 for Two (2) sessions;
November 18, 1992 for Two (2) sessions.

Hearing Location: New Orleans, Louisiana.

CASE SUMMARY

Claimants Charles H. Wilkinson, Jr. ("Wilkinson") and Harry Taylor ("Taylor") alleged that Respondent Oppenheimer & Co., Inc. ("Oppenheimer") and PaineWebber, Incorporated ("PaineWebber") sold Trans World Airlines, Jr. Subordinated Debentures, due 09/30/2008 at 12.00% to Claimants based on material misstatements and omissions made by Respondents' personnel. Claimants further alleged that the most serious of the omissions was the failure to inform Claimants that the TWA - 12%/2008 securities were subject to Original Issue Discount ("OID") and contained an undisclosed tax disadvantaged element. Based upon the allegations presented, Claimants asserted causes of action for securities fraud under both federal and state statute; unsuitability; negligence; and breach of contract.

Respondent Oppenheimer denied Claimants' allegations, alleging that:

- 1) The investment in TWA -12%/2008 debentures was suitable for both Wilkinson and Taylor given their financial situation and investment objectives;
- 2) Oppenheimer does not, nor is it required to, provide its customers with tax advice concerning potential investments;
- 3) After the accounts left Oppenheimer, Claimants continued to purchase additional debentures at PaineWebber, which Oppenheimer cannot be responsible for after the accounts had been transferred

beyond Oppenheimer's purview.

In addition, Oppenheimer asserted the following affirmative defenses:

- 1) The Statement of Claim fails to state a cause of action upon which relief can be granted;
- 2) Oppenheimer acted in compliance with all applicable rules and regulations, acted in good faith and did not induce the alleged acts which constituted violations of law;
- 3) The Claimants' alleged damages have no causal relationship with any act attributable to Oppenheimer;
- 4) The injuries allegedly sustained by Claimants were caused, in whole or in part, by the Claimants' failure to mitigate their damages;
- 5) Claimants did not reasonably rely to their detriment on any action or inaction attributable to Oppenheimer;
- 6) Claimants have waived their rights to maintain this action and ratified all transactions in their account; and
- 7) Oppenheimer discharged its responsibilities in a professional and ethical manner, in good faith, and all actions were well within the parameters of accepted brokerage procedure and all exchange and governmental regulations.

Respondent PaineWebber denied the material allegations of the Statement of Claim, alleging:

- 1) Both Wilkinson and Taylor were sophisticated investors with over 20 years experience in securities, bonds and futures in excess of 20 years;
- 2) In June of 1990, Wilkinson transferred bonds with a face value of \$318,000.00 of TWA - 12%/2008 from his Oppenheimer account into his PaineWebber account, making two additional purchases of TWA - 12%/2008 in October, 1990 and February, 1991 totaling approximately \$663,000.00 in face value;
- 3) In September of 1991 Taylor transferred into his PaineWebber account from his Oppenheimer account bonds with a face value of \$244,720.00 of TWA - 12%/2008. Taylor made two additional purchases of TWA - 12%/2008 bonds with PaineWebber in December, 1990 and

February, 1991 totaling approximately \$400,000.00 in face value;

4) The bonds were originally purchased by Claimants at Oppenheimer based upon a recommendation contained in a research report issued by Oppenheimer analyst Robert McAdoo ("McAdoo") in October, 1989 which did not disclose that the bonds were subject to OID;

5) In June, 1990, McAdoo issued another "bullish" research report on the TWA - 12%/2008 bonds which failed to disclose that the bonds were subject to OID;

6) PaineWebber never recommended nor issued any research reports on these bonds, no orders to purchase were solicited and the purchases of these bonds by Claimants made at PaineWebber were clearly decisions made by the Claimants themselves; and

7) The bonds dropped significantly in value as a result of adverse market conditions and the deteriorating condition of TWA.

In addition, PaineWebber asserted the following Affirmative Defenses:

1) The Statement of Claim fails to state a cause of action upon which relief can be granted;

2) PaineWebber acted in compliance with all rules and regulations, acted in good faith and did not induce the alleged acts constituting violations of law;

3) The damages allegedly suffered by Claimants have no causal relationship with any act committed by or legally attributable to PaineWebber;

4) The claims are barred, in whole or in part, by the doctrines of ratification, estoppel, laches, assumption of risk, waiver and by the applicable statute of limitations;

5) The alleged injuries to Claimants were caused, in whole or in part, by the conduct of the Claimants and by their failure to mitigate their damages;

6) Claimants did not reasonably rely to their detriment on any action or inaction attributable to PaineWebber;

7) The transactions complained of were duly authorized by Claimants, who, at all times, were in sole control of the assets in their account; and

8) Claimants knew and understood the risks associated with the investment, represented themselves as willing and able to assume the risks and were suitable for the investments given their financial circumstances, background, experience and objectives.

RELIEF REQUESTED

Claimants Wilkinson and Taylor requested that the panel enter an award in an amount somewhere between \$250,000.00 and \$500,000.00, plus attorneys' fees and costs.

Respondents Oppenheimer and PaineWebber each requested that the Statement of Claim be dismissed in their entirety and that the costs of the proceeding be assessed against Claimants.

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.

At hearing on November 17, 1992, Claimants withdrew their Motion to Bar a Defense to the claim by Oppenheimer and their Motion to Bar PaineWebber's witnesses pursuant to Section 32 (c) of the NASD Code of Arbitration Procedure.

At hearing on November 17, 1992, Respondent PaineWebber presented a Motion to Dismiss the case for failure of Claimants to state a claim upon which relief could be granted. Upon review, the panel determined that the Motion would be denied.

At the conclusion of the Claimants' case-in-chief, Respondents PaineWebber and Oppenheimer each moved for a directed verdict. In addition, Claimants moved for summary judgment. Upon review of the motions presented by the parties, the panel determined that all three motions were denied.

At hearing, the parties stipulated as to the applicability of the law of the state of Mississippi.

In closing arguments, counsel for Claimants requested that the panel insert specific language in the award. The panel has partially granted that request and the appropriate language is inserted below.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), 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 Charles H. Wilkinson the sum of \$16,835.10 as compensatory damages plus interest at the rate of 8% per annum commencing 30 days from the date the panel's award is issued to the parties until paid;
- 2) In addition, Respondent Oppenheimer & Co., Inc. is liable for and shall pay to Claimant Charles H. Wilkinson the sum of \$10,183.28 as attorneys' fees and costs incurred in this matter. In determining to award attorneys' fees to Claimant Wilkinson, the panel considered the arguments set forth by the parties, as well as Section 75-71-717 of the Mississippi Blue Sky Act [Miss. Sec. Act. Chap. 521 Sec. 75-71-717], and determined that authority existed for an award of attorneys' fees in favor of Claimant Charles H. Wilkinson;
- 3) Furthermore, Respondent Oppenheimer & Co., Inc. is liable for and shall pay to Claimant Harry Taylor the sum of \$7,950.99 as compensatory damages, plus interest at the rate of 8% per annum commencing 30 days from the date the panel's award is issued to the parties until paid;
- 4) In addition, Respondent Oppenheimer & Co., Inc. is liable for and shall pay to Claimant Harry Taylor the sum of \$4,809.76 as attorneys' fees and costs incurred in this arbitration. In determining to award attorneys' fees to Taylor, the panel considered the arguments of the parties, as well as, Section 75-71-717 of the Mississippi Blue Sky Act [Miss. Sec. Act., Chap. 521, Sec. 75-71-717] and determined that authority existed for an award of attorneys' fees in favor of Claimant Harry Taylor;
- 5) The claims for punitive damages are hereby dismissed and denied in their entirety;
- 6) Respondent Oppenheimer & Co., Inc. is liable for and shall pay to Claimants Charles H. Wilkinson and Harry Taylor the sum of \$950.00 as reimbursement of the filing fee and hearing session deposit paid by Claimants;
- 7) The panel specifically finds that neither the broker, nor the branch office manager, was found guilty of any wrong doing in this

matter;

8) All claims against Respondent PaineWebber, Inc. are hereby dismissed and denied in their entirety; and

9) All other costs not specifically enumerated herein shall be borne by the party incurring the cost.

FORUM FEES

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

One (1) Pre-hearing Session X \$300.00 per session = \$300.00;
Four (4) Sessions X \$750.00 per session = \$3,000.00;
Total Forum Fees Due = \$3,300.00.


The National Association of Securities Dealers, Inc. ("NASD") shall retain the claim filing fee of \$200.00 and the hearing sessions deposit of \$750.00 previously deposited by the Claimants, Charles H. Wilkinson and Harry Taylor. Respondent Oppenheimer & Co., Inc. is liable for and shall pay to the NASD Forum Fees in the sum of \$2,550.00.

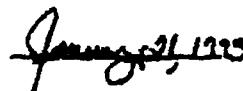
Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Dated:


William D. Hawkland, Jr., Esq.
Public Arbitrator
Chairperson



Clayton J. Borne, III, Esq.
Public Arbitrator

Robert J. Eitel
Industry Arbitrator

Date of Decision: _____

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Concurring Arbitrators' Signatures

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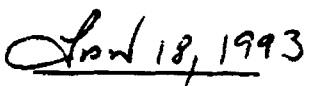
Dated:

William D. Hawkland, Jr., Esq.
Public Arbitrator
Chairperson



Clayton J. Borne, III, Esq.
Public Arbitrator

Robert J. Eitel
Industry Arbitrator



Jan 18, 1993

Date of Decision: _____

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Dated:

William D. Hawkland, Jr., Esq.
Public Arbitrator
Chairperson

Clayton J. Borne, III, Esq.
Public Arbitrator



Robert J. Eitel
Industry Arbitrator

1-16-93

Date of Decision: _____