

PUBLIC

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between :
:
Eugene E. & Margaret S. Sikes :
:
Claimants :
:
vs. :
:
Oppenheimer & Co., Inc. :
Bruce P. McGaugh :
:
Respondents :

CASE #92-01469
AWARD

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on April 29, 1992, Claimants Eugene E. & Margaret S. Sikes, who appeared Pro Se, alleged that Respondent Bruce P. McGaugh, Account Executive of Respondent Oppenheimer & Co., Inc. contacted them for the purpose of soliciting the sale of investments and Respondent Bruce P. McGaugh recommended the purchase of Drexel Burnham Lambert High Income Trust Securities ("HITS") series number 9, in addition to Van Kampen Merritt Insured Municipal Income Trust ("IM-IT") series number 69. Claimants further alleged that they were completely unfamiliar with these investments whereby they relied on Respondent Bruce P. McGaugh's advice, at which time, he was aware that Claimants had a very low tolerance for risk and only wanted conservative, low-risk investments. Claimants contended that Respondent Bruce P. McGaugh insisted that the recommended investments were not speculative and were entirely suitable in relation to their investment objectives whereby based on his assurances Claimants purchased the recommended investments. Claimants further contended that after reading the prospectus they first discovered that misrepresentations had been made by the Respondents. Claimants asserted that if they had been given truthful and correct information they would never have purchased these securities. Claimants further asserted that the investments were unsuitable whereby Respondents Oppenheimer & Co., Inc. and Bruce P. McGaugh made misrepresentations and omissions, committing fraud and breaching their fiduciary duty to Claimants.

Claimants asserted a Motion to Preclude pursuant to Section 13(d) and 25(b)(2)(iii) of the NASD Code of Arbitration Procedure whereby they objected to any further extensions and requested the Director of Arbitration hold Respondent Oppenheimer & Co., Inc. as

nonresponsive as of June 15, 1992 at which time, Claimants requested that they be barred from presentation of facts or defenses to this proceeding. -

Respondent Oppenheimer & Co., Inc. by and through their in-house counsel John T. McGuire, Esq., maintained that at the time Claimants Eugene E. & Margaret S. Sikes account was opened they informed Respondent Oppenheimer & Co., Inc. that their stated investment objectives were for tax-free, fixed income and business risk appreciation. Respondent Oppenheimer & Co., Inc. further maintained that if one was to accept Claimant's assertion that they did not receive the prospectus until Winter of 1986, it flies in the face of reason that they would hold their positions for an additional 4 1/2 years before they liquidated them, therefore, Respondent Oppenheimer & Co., Inc. cannot be held liable for Claimants' losses.

Respondent Bruce P. McGaugh, who appeared Pro Se, maintained that Claimants purchased over \$100,000.00 municipal bonds in May of 1985 and before purchasing they intensely studied and dissected the prospectus. Respondent Bruce P. McGaugh further maintained that Claimants later expressed a desire to put \$10,000.00 into something more aggressive and he told Claimants all the risks of the investments. Respondent Bruce P. McGaugh contended that if Claimants' allegations were true, why did they not make them known to him during the 21 month period he remained at Respondent Oppenheimer & Co., Inc. and that it is over 4 years after the initial purchase, therefore, Respondent Bruce P. McGaugh cannot be liable for Claimants' failure to mitigate their losses.

RELIEF REQUESTED

Claimants Eugene E. and Margaret S. Sikes requested \$6,631.27 in actual damages plus interest at the rate of not less than 10% per annum together with Punitive damages and reimbursement of the NASD filing fee.

Respondent Oppenheimer & Co., Inc. requested the claim be dismissed in its entirety.

Respondent Bruce P. McGaugh requested the claim be denied.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Louis L. Ludwick, was selected to review and determine the matter in controversy between the parties set forth

in submissions to Arbitration signed by the Claimants on April 22, 1992, by the Respondent Oppenheimer & Co., Inc. on July 7, 1992 and by the Respondent Bruce P. McGaugh on June 8, 1992.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Claimants Eugene E. & Margaret S. Sikes Motion to Preclude Respondent Oppenheimer & Co., Inc. Statement of Answer is denied.
2. The claims of Claimants Eugene E. & Margaret S. Sikes against Respondents Oppenheimer & Co., Inc. and Bruce P. McGaugh are dismissed.
3. The Claimants' request for Punitive damages is denied.
4. The parties shall bear their respective costs.
5. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Eugene E. & Margaret S. Sikes shall be retained by the NASD, Inc.

AFFIRMATION

I, LOUIS L. LUDWICK, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: November 4, 1992