

N.A.S.D. AWARD  
NATIONAL ASSOCIATION OF SECURITIES DEALERS

---

In the Matter of the Arbitration  
Between

Case Number 92-02601

Diane K. Potter and  
Tracy E. Potter,

Claimants,

v.

Howard M. Silverman, Richard  
Devine, Oppenheimer & Co., Inc.,  
Drexel Burnham Lambert, Inc.,  
Vincent Thomas & Associates, Inc.,  
and Robert Ainbinder & Co.,

Respondents.

REPRESENTATION:

Peter J. King, Esquire and Linda A. King, Esquire for Claimants.

Howard M. Silverman, Pro Se, for Respondent Silverman.

CASE INFORMATION:

Statement of Claim filed (date not shown).

Claimants' Submission Agreements signed on June 9 and June 12,  
1992.

Respondents' Answers filed on April 2, 1993 for Oppenheimer,  
Silverman and Devine.

Respondents' Submission Agreements signed on April 2, 1993 -  
Oppenheimer; April 12, 1993 - Silverman.

Initial Claim: \$180,400.00 for Tracy E. Potter.  
\$240,097.27 for Diane K. Potter.

#### HEARING INFORMATION:

Hearing Date: February 1, 1994.

Meeting of Arbitrators to review testimony and make an award:  
February 1, 1994.

Hearing Location: Westin William Penn Hotel, Pittsburgh, PA.

#### PRELIMINARY MATTERS:

Claims against Oppenheimer & Co., Inc., Richard Devine, Vincent Thomas & Associates, Robert Ainbinder & Co., and Drexel Burnham Lambert were withdrawn.

#### CASE SUMMARY

Claimant, Diane Potter, a resident of Seven Springs, Pennsylvania, and divorced wife of Thomas Potter, a Rockwell heir, received as a part of her divorce settlement \$250,000 worth of Rockwell stock in 1984.

Howard Silverman, a stockbroker with offices in New York City, was a broker for the claimant's ex-husband and for their two daughters, who were very satisfied with respondent.

Late in 1984, claimant opened a discretionary account with Silverman, delivered the Rockwell stock and testified that she told him that she needed more income than that produced by the Rockwell dividends, but not to sell more than half of the stock. Respondent denied that he was told not to sell the Rockwell stock.

From 1985 until the 1987 stock market crash, claimant was satisfied with respondent's performance, recommended him to her friends and never made any complaints. She was sent monthly statements setting forth all transactions during each month. Near the end of 1987, claimant realized that her principal had dwindled, the Rockwell stock had been sold and in early 1988, she withdrew the balance of the funds from her account.

In addition to taking out cash each month for living expenses, claimant withdrew \$23,000 in 1986 to purchase a Porsche automobile and \$50,000 in 1987 to buy a condominium. The stock market crash in the fall of 1987 and the withdrawal of funds were responsible for the decline in claimant's principal.

Tracy E. Potter, the other claimant and Diane's daughter, lives in Taos, New Mexico. In 1984, she had \$250,000 from a trust which she had in Pittsburgh transferred to Silverman

pursuant to a discretionary account and named Silverman as a co-trustee with her father.

Like her mother, Tracy made substantial monthly withdrawals from the account and took out \$123,000 to purchase an apartment when living in New York. She also received monthly statements as did her father, the co-trustee. By the time of the market crash, she had taken out \$185,000.

The arbitrators have found that the respondent, Howard M. Silverman, did not breach his fiduciary, statutory or other legal duties as a stockbroker to claimants, did not charge exorbitant commissions, did not make excessive trades nor did he make any improper representations regarding profits.

#### RELIEF REQUESTED

Claimants Diane and Tracy Potter requested the sums of \$240,000 and \$180,000, respectively, in damages. Respondent requested that all claims be dismissed.

#### AWARD

After considering the pleadings and the testimony of witnesses at the evidentiary hearings, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. The arbitrators find in favor of respondent, Howard M. Silverman, and against claimants, Diane K. Potter and Tracy E. Potter.

2. Each party shall bear their own costs.

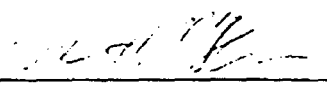

#### FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions x \$750	= \$1,500, less
hearing deposit of \$750	= \$ 750 net due.

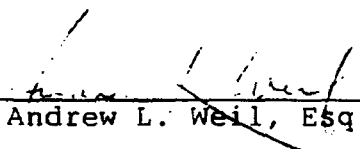
Respondent Howard Silverman be and hereby is liable and shall pay the NASD the sum of \$750 to represent forum fees.

ARBITRATION PANEL

<u>Name and Signature</u>	<u>Status</u>	<u>Date Signed</u>
<u>Andrew L. Weil, Esq.</u>	Public Arbitrator & Chairperson	<u>                    </u>
<u> Paul H. McKenna</u>	Industry Arbitrator Panelist	<u></u>
<u>Randall L. Katz</u>	Public Arbitrator Panelist	<u>                    </u>

NASD Date of Decision: February 17, 1994

ARBITRATION PANEL

<u>Name and Signature</u>	<u>Status</u>	<u>Date Signed</u>
 _____ Andrew L. Weil, Esq.	Public Arbitrator & Chairperson	<del>xxxxxx</del> _____
_____ Paul H. McKenna	Industry Arbitrator Panelist	_____
_____ Randall L. Katz	Public Arbitrator Panelist	_____

NASD Date of Decision: February 17, 1994

ARBITRATION PANEL

Name and Signature

Status

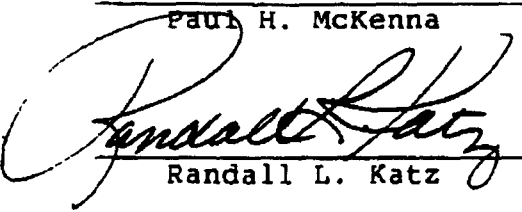
Date Signed

Andrew L. Weil, Esq.

Public Arbitrator &  
Chairperson

Paul H. McKenna

Industry Arbitrator  
Panelist

  
Randall L. Katz

Public Arbitrator  
Panelist

2-7-94

NASD Date of Decision: February 17, 1994