

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant(s)

Russell E. Relyea, Trustee
Treasure Valley X-Ray, Inc.
Richard G. Fedrizzi, Individually and
as Trustee
J.L. Terteling, Trustee

NASD Arbitration
No. 92-02619

Name of Respondent(s)

Oppenheimer & Co., Inc.
William F. Gillis

REPRESENTATION

For Claimants: Patrick J. Miller, Esq., Givens, Pursley, Webb & Huntley, Boise, Idaho

For Respondents: Eugene L. Small, Esq., Oppenheimer & Co., Inc., New York, New York

CASE INFORMATION

Statement of Claim filed: August 5, 1992

Claimants' Submission Agreements signed as follows:

Russell E. Relyea, Trustee: September 23, 1992

Treasure Valley X-Ray, Inc.: September 23, 1992

asserted affirmative defenses.

RELIEF REQUESTED

Claimants requested the following damages:

Relyea Pension Plan:

Losses on unauthorized trades	\$217,511.64
Interest during time securities held	\$ 36,988.36
Total exclusive of pre-judgment interest	\$254,500.00

Treasure Valley X-Ray, Inc. Accounts:

Losses on unauthorized trades	\$124,077.40
Interest during time securities held	\$ 19,222.60
Total exclusive of pre-judgment interest	\$143,300.00

Terteling Employee Plan:

Losses on unauthorized trades:	\$183,474.09
Interest during time securities held	\$ 30,275.91
Total exclusive of pre-judgment interest	\$213,750.00

In addition, Claimants alleged that an alternative measure of damages is appropriate in light of Mr. Gillis' violation of the limiting criteria placed upon his discretion concerning the portion of the portfolio which was to be invested in equity securities (no more than 50% at any one time) and the portion of the portfolio which would be invested in any one security (no more than 10%). Violation of these limiting criteria in essence tainted the entire accounts. During the time period in which Mr. Gillis had control over each of the Claimants' accounts, the Dow Jones rose by more than 40%. During this same time period, the net value of each of the Claimants declined. Under this analysis, the difference between what the Treasure Valley X-Ray Account would be worth had it performed as well as the Dow Jones during the time period under which it was under Mr. Gillis' control, and the value as of the time the account was taken out of Mr. Gillis' control is the sum of \$225,392.00. The loss to the Terteling Employee Profit Sharing Plan under this analysis is \$349,006.00 and the loss to Relyea Pension Plan under this analysis is \$360,210.00. All damage calculations are exclusive of pre-judgment interest accruing after the accounts were taken from Mr. Gillis' control. Claimants seek an award of pre-judgment interest which should be calculated effective as of the time of the award.

Richard G. Fedrizzi, Individually and as Trustee: August 19, 1992 and
September 23, 1992

J.L. Terteling, Trustee: August 20, 1992

Joint Statement of Answer filed by Respondents: November 17, 1992

Respondents' Submission Agreements signed as follows:

Oppenheimer & Co., Inc.: November 17, 1992

William F. Gillis: December 2, 1992

HEARING INFORMATION

Pre-Hearing Conference: None

Hearing Dates/Sessions: July 28, 1993 (two sessions)
July 29, 1993 (two sessions)
July 30, 1993 (two sessions)

Hearing Location: Salt Lake City, Utah

CASE SUMMARY

Regarding investments in "merger arbitrage" opportunities, Claimants alleged that Respondent William F. Gillis directly and knowingly violated the specifically stated limitations upon his discretionary trading authority and is guilty of unauthorized trading. Claimants also alleged violation of the anti-fraud provisions of the Securities Exchange Act of 1934 and particularly Rule 10(b)(5) thereof as well as the comparable anti-fraud provisions of the State of Idaho Securities Act. Claimants further alleged violation of the National Association of Securities Dealers, Inc. (NASD) Rules of Fair Practice and breach of contract.

Respondents denied the allegations of impropriety contained in the Statement of Claim and further denied that they are liable to any of the Claimants for any monetary damages. Respondents alleged there were absolutely no misrepresentations made by Mr. Gillis to any of the Claimants at any time with regard to the investment proposals made. Respondents further alleged that while most of the accounts did sustain losses, those losses were the direct result of market risks which the Claimants knowingly and intelligently undertook in the hope of achieving above average annual returns on their money. Respondents also

Respondents requested that Claimants' Statement of Claim be dismissed in its entirety and that the costs of this proceeding be assessed fully 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.

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. As to the Relyea Pension Plan, Respondents, Oppenheimer & Co., Inc. and William F. Gillis are jointly and severally liable for and shall pay to Russell E. Relyea the sum of \$61,693.00. The arbitrators did not award interest, punitive or exemplary damages in addition to this amount.
2. As to the Terteling Employee Plan, Respondents, Oppenheimer & Co., Inc. and William F. Gillis are jointly and severally liable for and shall pay to J.L. Terteling the sum of \$24,784.00. The arbitrators did not award interest, punitive or exemplary damages in addition to this amount.
3. All claims by Claimants, Treasure Valley X-Ray, Inc., Richard G. Fedrizzi, Individually and as Trustee, including any claims for interest, punitive or exemplary damages, are dismissed.
4. The parties shall each bear their respective costs including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The NASD shall refund the \$1,000.00 hearing session

deposit previously deposited by the Claimants. Forum fees are assessed against:

Respondents, Oppenheimer & Co., Inc. and William F. Gillis, jointly and severally, in the amount of \$6,000.00, calculated as follows: Six hearing sessions times \$1,000.00/session.

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

ARBITRATORS

<u>Name</u>	<u>Public/Industry</u>
Julian D. Jensen, Esq.	Public Arbitrator
Peter D. Meldrum	Public Arbitrator
Richard C. Albright	Industry Arbitrator

Concurring Arbitrators' Signatures

Julian D. Jensen 8/24/93
Julian D. Jensen, Esq.

Date Served: 09/03/93

Peter D. Meldrum

Richard C. Albright

Date of Decision: _____