

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Bob E. Syphrett

92-02691

Name of Respondent

Oppenheimer & Co., Inc.

REPRESENTATION

For Claimant: Bob E. Syphrett was represented by Jacalyn D. Scott, Esq. of Wilshire Scott & Dyer, located in Houston, Texas.

For Respondent: Oppenheimer & Co., Inc. was represented by Eugene L. Small, Esq. of Oppenheimer & Co., Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: August 11, 1992.

Claimant's Submission Agreement signed on: August 1, 1992.

Statement of Answer filed by Respondent Oppenheimer & Co., Inc. on: October 9, 1992.

Respondent's Submission Agreement signed on: October 9, 1992 by Eugene L. Small, Senior Vice President, Oppenheimer & Co., Inc.

HEARING INFORMATION

Pre-Hearing Conference: April 19, 1993 for One (1) session before One (1) Arbitrator.

Hearing Date/Sessions: April 20, 1993 for Three (3) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Claimant Bob E. Syphrett ("Syphrett") alleged that a broker employed by Respondent

Oppenheimer & Co., Inc. ("Oppenheimer") made the following unauthorized trades resulting in losses in his account:

1. On February 19, 1992, Syphrett approved the purchase of 2,000 shares of Centocor stock. However, Oppenheimer placed 3,000 shares into his account which were subsequently sold at a loss of \$1,877.50;
2. On March 4, 1992, Oppenheimer purchased 50 calls on Centocor stock for Syphrett's account without authorization at a loss of \$12,413.62;
3. On March 12, 1992, Oppenheimer purchased 2,000 shares of Centocor stock for Syphrett's account without his authorization which were subsequently sold at a loss of \$34,253.50;
4. On March 25, 1992, Oppenheimer purchased 2,500 shares of Cytotherapeutics stock without Syphrett's authorization which were sold the next day for a loss of \$7,268.75;
5. On March 31, 1992, Oppenheimer purchased and sold 300 shares of Mirage Resorts stock without Syphrett's authorization, resulting in a loss of \$182.85;
6. On May 12, 1992, Oppenheimer made an unauthorized trade for stock in Everex Systems, with a resulting loss of \$11,568.00; and
7. Oppenheimer purchased 20 calls on Time Warner stock for Syphrett's account without his authorization resulting in a loss of \$5,121.23.

Respondent Oppenheimer denied the material allegations of the Statement of Claim, except for the Time Warner transaction, alleging that:

1. With the exception of the Time Warner options, all other transactions were either authorized by Syphrett prior to execution, or ratified thereafter when he learned of the trade;
2. Syphrett opened his account in February of 1992, informing his broker that he had ten years of prior investment experience, had aggressive investment objectives which were noted on the new account application as short-term trading and business risk appreciation, and had a substantial net worth and income; and
3. Syphrett's claims were barred by the principles of ratification, waiver and estoppel.

RELIEF REQUESTED

Claimant Syphrett requested that the panel award him the sum of \$72,685.45 for the losses sustained as a result of the unauthorized transactions plus interest at the highest rate provided by law; punitive damages in the amount of \$100,000.00; attorneys' fees and costs with the highest interest allowed by law; and all other relief the Claimant showed himself entitled.

Respondent Oppenheimer requested that all claims be dismissed with the exception of the claim pertaining to the Time Warner call options.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Oppenheimer presented a Motion to Dismiss at the close of Claimant's case. The Arbitrators determined that the Motion would be denied.

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 pleading, the testimony and the evidence presented at the hearing, the undersigned arbitrator 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 Bob E. Syphrett the sum of \$72,685.45 plus interest at the rate of 6% per annum from July 1, 1992 until date of service of the award. The interest shall increase to 10% per annum from date of service until the award is paid in full;
2. In addition, Respondent Oppenheimer & Co., Inc. shall pay to Claimant Bob E. Syphrett the sum of \$200.00 as reimbursement of the non-refundable claim filing fee previously paid to the NASD by Claimant Bob E. Syphrett; and
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) pre-hearing session x \$300.00 per session = \$300.00; Three (3) HEARING sessions x \$750.00 per session = \$2,250.00; Total Forum Fees = \$2,550.00.

The National Association Of Securities Dealers, Inc. shall retain the claim filing fee of \$200.00 and refund the hearing session deposit of \$750.00 previously deposited by the Claimant, Bob E. Syphrett. 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

Date

Donald H. Fidler, Esq.
Donald H. Fidler, Esq.
Public Arbitrator
Chairperson

June 28, 1993

Russell F. Rains, Esq.
Russell F. Rains, Esq.
Public Arbitrator

June 28, 1993

Gregory E. Cater
Gregory E. Cater
Industry Arbitrator

June 28, 1993

Date of Service of Award: 6-29-93