

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

R. Vincent Smith

92-02848

Name of Respondents

Oppenheimer & Co., Inc.
Patrick D. Loftus, III

REPRESENTATION

For Claimant at the hearing: John A. Bugg, Esq. of Conner & Winters, Tulsa, Oklahoma.

For Respondents at the hearing: Ronald J. Restrepo, Esq. of Doyle, Reed, Restrepo, Harvin & Robbins, Houston, Texas.

CASE INFORMATION

Statement of Claim filed: August 21, 1992. Claimant's Submission Agreement signed on: July 31, 1992.

Joint Statement of Answer filed by Respondents on: October 16, 1992. Respondent, Oppenheimer & Co., Inc.'s Submission Agreement signed on: October 15, 1992.

HEARING INFORMATION

Hearing Date/Sessions: April 27, 1993 for two (2) sessions.

Hearing Location: Oklahoma City, Oklahoma.

CASE SUMMARY

Claimant Vincent Smith ("Smith") alleged that Respondent Oppenheimer & Company, Inc. ("Oppenheimer") through its agent, Respondent Patrick Loftus III ("Loftus") made untrue statements of material fact and/or omitted to state material facts necessary to make such statements not misleading. Smith further alleged that relying on the guarantees of Loftus that

the Eastern Stock was fully secured by the airplanes, purchased 5000 shares of the Eastern Stock on or about August 3, 1989 at \$11.75 per share. Smith alleged that he sold all of the Eastern Stock purchased through Loftus and Oppenheimer at the price of .005 per share, and after paying broker's fees and commissions. Smith lost the entire amount of his investment. Smith alleged five claims for relief: 1. false and material misrepresentations concerning the secured status of the Eastern stock and its market and liquidation value; 2. violation of Section 408(a) of the Oklahoma Securities Act, 71 O.S. 1991, Section 408(a); 3. untrue statements or omissions of material fact in violation of the Oklahoma Securities Act; 4. Oppenheimer and violation of Oklahoma Securities Act, 71 O.S. 1991, Section 408(b), aiding and abetting; 5. failure to supervise Loftus.

Respondents Oppenheimer and Loftus denied the allegations set forth in the Statement of Claim. Oppenheimer and Loftus alleged that no misrepresentations were made to Smith and that he was suitable to invest in Eastern Airlines. Oppenheimer and Loftus alleged that: 1. Smith failed to state a claim upon which relief can be granted; 2. Smith authorized, consented and acquiesced to the transactions in his account. 3. Smith waived any claims alleged by continuing the investments strategy after acquiring actual knowledge of the nature of that strategy and the risks inherent thereto.

RELIEF REQUESTED

Claimants requested actual damages in excess of \$59,700.00 and punitive damages in excess of \$50,000.00, together with pre- and post-judgment interest as allowed by law, and costs for the First Claim, damages in excess of \$59,700.00, together with interest, costs, and attorney's fees for the Second Claim for relief, that Oppenheimer be adjudged to be jointly and severally liable with Loftus for the Third Claim for relief, that Loftus and Oppenheimer be adjudged to be jointly and severally liable as aiders and abettors for the Fourth Claim for relief, actual damages in excess of \$59,700.00, together with pre- and post-judgment interest and costs for the Fifth Claim for relief.

Respondents requested that the Statement of Claim be dismissed in its entirety.

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.

Respondent Patrick Loftus did not file with the NASD an executed submission to arbitration pursuant to Section 12 of the Code, but having answered the claim, appeared and testified, is bound by the determination of the panel on all issues submitted.

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. The Statement of Claim is denied and dismissed in its entirety;
2. Each of the parties shall bear their own costs and expenses incurred, including attorney's fees, other than those specifically enumerated herein;

FORUM FEES

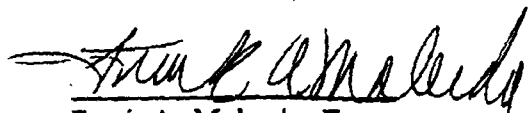
Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed:

2 sessions X \$750 = \$1500 minus hearing session deposit of \$750 = net \$750 due.

Additional forum fees Assessed Against Respondent Oppenheimer & Company, Inc. and Patrick Loftus III, jointly and severally in the amount of \$750.

Additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel, Concurring:



Frank A. Molenda, Esq.
Public Arbitrator, Presiding

Dated: June 1, 1993

Kelley L. Cornelius, Esq.
Public Arbitrator

Edward O'Rourke
Industry Arbitrator

Date Award Served By The NASD: _____

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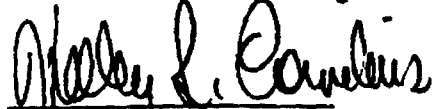
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By The Arbitration Panel, Concurring:

Dated:

Frank A. Molenda, Esq.
Public Arbitrator, Presiding



Kelley L. Cornelius, Esq.
Public Arbitrator

6/3/93

Edward O'Rourke
Industry Arbitrator

Date Award Served By The NASD: _____

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By The Arbitration Panel, Concurring:

Dated: _____

Frank A. Molenda, Esq.
Public Arbitrator, Presiding

Kelley L. Cornelius, Esq.
Public Arbitrator



Edward O'Rourke
Industry Arbitrator

JUNE 2 1993

Date Award Served By The NASD: _____