

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Stephen M. Ellin

92-02936

Name of Respondent

Oppenheimer & Co., Inc.

REPRESENTATION

For Claimant: Stephen M. Ellin appeared *pro-se*.

For Respondent, Oppenheimer & Co., Inc.: Michelle A. Murphy, Esq. of Oppenheimer & Co., Inc.

CASE INFORMATION

Statement of Claim filed: August 31, 1992.

Claimant's Submission Agreement signed on: August 26, 1992.

Statement of Answer filed by Respondent, Oppenheimer & Co., Inc. on: November 3, 1992.

Respondent, Oppenheimer & Co., Inc.'s Submission Agreement signed on: November 9, 1992.

HEARING INFORMATION

Pre-Hearing Conference: June 14, 1993.

Hearing Date/Session: July 20, 1993 - One Session.

Hearing Location: NASD Offices - New York, NY.

CASE SUMMARY

Claimant alleges that at the recommendation of his account broker, William Lefkowitz ("Lefkowitz") he purchased shares in Centocor, Inc. Claimant alleges that Lefkowitz told him that this investment was in line with his conservative strategy. Claimant alleges that Lefkowitz did not tell him that the financial condition of the company was dependent on the FDA approval of a certain drug. Claimant alleges that the stock price dropped when approval was delayed, and that it declined further when approval was denied. Claimant alleges that this investment was highly speculative and counter to his instructions to Lefkowitz.

Respondent, Oppenheimer & Co., Inc. ("Respondent") maintains that the price paid for the Centocor stock was reasonable, since the market was sanguine about the company's future. Respondent maintains that even though the stock price dropped when approval was delayed, it was thought that FDA approval was forthcoming. Respondent maintain that FDA rejection was unexpected, and something not reasonably foreseen by the researchers at Oppenheimer & Co., Inc.

RELIEF REQUESTED

Claimant requested that the transaction be canceled and that the entire purchase price be returned to his account.

Respondent stated that it is not liable for the poor performance of Centocor.

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 original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing the undersigned arbitrator has decided in full and final resolution of the issues submitted for determination as follows:

- 1) Claimant's claim is hereby dismissed in its entirety;

The arbitrator having found that the account was not discretionary, the Claimant acknowledged having the ultimate responsibility for making the actual purchase. The Claimant did not prove that the Respondent withheld information which the Claimant could have requested and which was available to him. The printed material from the Respondent, which was available to the Claimant, contained sufficient disclosure of negative information. Claimant purchased the stock at his own risk, and he knew of this risk at the time of purchase.

- 2) Each party shall bear their respective costs of this action, including attorney's fees.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed.

\$100.00	Non-refundable filing fee
\$300.00	Pre-hearing conference fee
\$300.00	Hearing sessions fee (1 session x \$300.00)

- 1) The NASD shall retain the \$100.00 non-refundable filing fee previously paid by the Claimant.
- 2) Respondent is hereby liable for the pre-hearing conference fee of \$300.00 and the hearing session fee of \$300.00. Respondent is directed to reimburse to the Claimant the hearing session deposit of \$300.00 Claimant previously deposited with the NASD. Respondent is further directed to pay the balance of \$300.00 to the NASD, Inc.

Arbitrator's Signature

Name

Public Chairperson


Joseph A. Schubin, Esq.

Date of Decision: August 27, 1993