

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

Name of Claimant

Stephen D. Tracy

92-02976

Name of Respondents

Oppenheimer & Co., Inc. and Dwight Badger

REPRESENTATION OF PARTIES

For Claimant at the hearing: Andrew J. Munro, Esq. of Munro and Munro, Troy, Michigan.

For Respondents at the hearing: Lee Ann Russo, Esq. of Jones Day Reavis & Pogue, Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: September 3, 1992. Claimants' Submission Agreement signed: September 1, 1992.

Joint Statement of Answer filed by Respondents on: December 21, 1992. Respondent Oppenheimer & Co., Inc.'s Submission Agreement signed on: December 18, 1992.

HEARING INFORMATION

Hearing date: January 5, 1994 for three (3) sessions; January 6, 1993 for two sessions; January 7, 1994 for two (2) sessions; March 10, 1994 for two (2) sessions; March 11, 1994 for two (2) sessions; March 14, 1994 for two (2) sessions; May 10, 1994 for two (2) sessions; May 11, 1994 for two (2) sessions; May 16, 1994 for one (1) session.

Hearing Location: Chicago, Illinois

CASE SUMMARY

Claimant Stephen Tracy ("Tracy") alleged that Respondent Oppenheimer & Company, Inc. ("Oppenheimer") has refused to pay monies owed to him earned in connection with his employment. As its First Cause of Action, Tracy alleged Oppenheimer violated the Illinois Wage Payment and Collection Act, that Oppenheimer breached the Implied Covenant of Good Faith as its Second Cause of Action, that Oppenheimer breached the express contract as its Third Cause of Action, that Oppenheimer committed libel, as its Fourth Cause of Action, that Oppenheimer engaged in Conversion of Property as its Fifth Cause of Action, that Oppenheimer Intentionally Interfered with Prospective Economic Advantages in its Sixth Cause of Action, that Oppenheimer Misappropriated Funds as its Seventh Cause of Action, and that Oppenheimer and Respondent Dwight Badger ("Badger") engaged in Slander as its Eighth Cause of Action.

Respondents Oppenheimer and Badger denied any liability to Tracy. Oppenheimer and Badger stated in their Answer that Tracy was terminated from employment with Oppenheimer because of the excessive customer trade renegees, as well as numerous customer complaints. As a result of Tracy's customer complaints, any settlements were charged to him. Oppenheimer and Badger stated that Tracy has failed to state a cause of action and his claims are barred by the Statute of Limitations.

RELIEF REQUESTED

Claimant requested judgment as follows: For the First Cause of Action, compensatory damages of not less than \$56,091.14; For the Second Cause of Action, compensatory damages of \$56,091.14 and punitive damages of \$1,000,000.00; For the Third Cause of Action, compensatory damages of not less than \$56,091.14 and punitive damages of \$1,000,000.00; For the Fourth Cause of Action, compensatory damages of \$500,000.00 and punitive damages of \$2,000,000.00; For the Fifth Cause of Action, compensatory damages of \$500,000.00 and punitive damages of \$2,000,000.00; For the Sixth Cause of Action, compensatory damages of \$500,000.00 and punitive damages of \$2,000,000.00; For the Seventh Cause of Action, compensatory damages of not less than \$56,091.14 and punitive damages of \$2,000,000.00; For the Eighth Cause of Action, compensatory damages of \$2,000,000.00 and punitive damages of \$2,000,000.00; On all causes of action, costs, attorney's fees and such further and other relief as may be deemed just and proper.

Respondents requested that the Statement of Claim be dismissed and that they be awarded their costs.

OTHER ISSUES CONSIDERED & DECIDED

Claimant withdrew his claim against Respondent Dwight Badger at the hearing.

Respondent filed a Motion to Dismiss and Claimant filed its response. The panel, at the hearing, granted the motion in part and denied the motion in part.

The parties have agreed that the Award in this matter may be executed by 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. Respondent Oppenheimer & Co., Inc. shall be and hereby is liable for and shall pay to the Claimant, the amount of Twenty Six Thousand, Four Hundred Ninety Six Dollars and Forty Four Cents (\$26,496.44);

2. All other requests by the Claimant are denied;

3. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated under Forum Fees below.

FORUM FEES

Pursuant to Section 43(c) of the NASD Code of Arbitration Procedure, the following forum fees are assessed:

18 hearing sessions x \$1500.00 = \$27,000.00

Pursuant to Section 43(c) of the Code, the NASD shall retain the nonrefundable filing fee in the amount of \$500, and shall retain the hearing session deposit in the amount of \$1500.00 previously paid to the NASD by Claimant.

Claimant shall pay to the NASD additional forum fees in the amount of Eighteen Thousand, Nine Hundred Dollars (\$18,900.00) less the \$1500 initially deposited with the NASD for a net amount due of Seventeen Thousand, Four Hundred Dollars (\$17,400.00). Respondent Oppenheimer and Co., Inc. shall pay to the NASD additional forum fees in the amount of Eight Thousand, One Hundred Dollars (\$8,100.00).

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

By The Arbitration Panel:

Dated:

6-15-94

s/s James L. Schwartz, Esq.
James L. Schwartz, Esq.
Presiding, Industry Arbitrator

6-7-94

s/s Kevin J. Conway, Esq.
Kevin J. Conway, Esq.
Industry Arbitrator

6-8-94

s/s Frank R. Niederman
Frank R. Niederman
Industry Arbitrator

Date of Service by the NASD: 6-16-94