

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Anne J. Mazzella
Michael Mazzella
Louis V. Mazzella

92-03455

Name of Respondents/ Third-Party Claimant

Oppenheimer & Co., Inc.
Joseph D'Amadeo

Name of Third-Party Respondent

Louis V. Mazzella, Sr.

REPRESENTATION

For Claimants Anne J. Mazzella, Michael Mazzella and Louis V. Mazzella (collectively referred to as "Claimants") appeared John Phelan, Esq. with the law firm of Phelan & Costello, New York, NY.

For Respondents Oppenheimer & Co., Inc. ("Oppenheimer") and Joseph D'Amadeo ("D'Amadeo") appeared Lloyd Clareman, Esq., New York, NY.

For Third-Party Respondent Louis V. Mazzella, Sr. appeared John Phelan, Esq. with the law firm of Phelan & Costello, New York, NY.

CASE INFORMATION

The Statement of Claim was filed on October 19, 1992 and Claimant Louis V. Mazzella's Submission Agreement was executed on September 29, 1992, Michael Mazzella's Submission Agreement was executed on September 29, 1992, and Anne J. Mazzella's Submission Agreement was executed on October 5, 1992. Claimants Amended their Statement of Claim on July 11, 1994.

The Statement of Answer of Respondent Oppenheimer & Co., Inc. was filed on December 21, 1992 and the Statement of Answer of Respondent Joseph D'Amadeo was filed on December 21, 1992. The Respondents filed a joint

Amended Statement of Answer on July 26, 1994.

Respondent Oppenheimer's Submission Agreement was executed on December 21, 1992 and Respondent D'Amadeo's Submission Agreement was executed on December 18, 1992.

HEARING INFORMATION

Hearing Dates/Sessions: July 26, 1994 - Two Sessions
 July 27, 1994 - Two Sessions
 July 28, 1994 - Two Sessions

All hearings were held at the National Association of Securities Dealers, Inc. offices located in New York City, NY.

CASE SUMMARY

It was alleged by the Claimants that Claimant Anne Mazzella maintained an individual account at Oppenheimer & Co., Inc. ("Oppenheimer") and that Claimants Louis and Michael Mazzella maintained a joint account at Oppenheimer. Claimants also alleged that Respondent Joseph D'Amadeo was a registered representative employed by Oppenheimer and was the account executive who managed the Claimants' brokerage accounts at Oppenheimer. Claimants also alleged that Respondents engaged in a course of conduct which was fraudulent, in breach of their contractual obligations, and in breach of their duties arising under the by-laws and rules of the NASD, during the period from about October, 1987 through approximately November, 1989. Claimants also alleged that Respondents repeatedly recommended extremely speculative and risky options and stocks which were unsuitable for the Claimants. Further, Claimants alleged that they relied upon Respondents' advice and recommendations both in their accounts at Oppenheimer and at other firms, through a series of false and misleading statements and omissions of material facts.

Moreover, Claimants alleged that following substantial losses in their accounts, Respondents induced Claimants to open accounts with a competitor firm which maintained an office in California, and recommended a broker who was represented as having excellent stock market information. Claimants also alleged that after opening the account they were induced to trade in various "takeover" and similar high risk speculative stocks and options and that Respondents are responsible and liable for the acts of a competitor brokerage firm as co-conspirators, aiders and abettors, and as primary wrongdoers.

Respondent Oppenheimer denied all allegations of wrongdoing as asserted against it in the Statement of Claim. Respondent Oppenheimer maintained that Louis M. Mazzella, Sr. opened the account with Oppenheimer in his wife's name in

October, 1987; that no misrepresentations were made to "induce" Mazzella to open this account; and that some of the securities purchased by Mazzella were unsolicited while, admittedly, some stocks were recommended by Respondents. Respondent Oppenheimer further maintained that Louis Mazzella, Sr. controlled the trading in the account he opened in his wife Anne's name; that Claimants were attempting to recover market losses that resulted from Louis Mazzella, Sr's aggressive, risk oriented trading strategies; and that Louis Mazzella, Sr. represented to Respondents that he had a net worth of ten million dollars, has had trading accounts all over Wall Street, and has exhibited a pattern of highly speculative trading time after time.

Moreover, Respondent Oppenheimer maintained that based upon their continued conversations, it became evident to D'Amadeo that Mazzella was an extremely experienced investor; that he was a short-term trader who particularly sought out opportunities for gain based on stocks that were "takeover" candidates, or for some other reason might be poised for quick appreciation; that Mazzella liked to trade very large positions, and had done so at other brokerage firms; and that Mazzella clearly had the means to make large trades and to absorb such losses as might occur. It was also maintained by Respondent Oppenheimer that Mazzella consistently wanted to use the maximum amount of margin available to him in order to maximize his leverage. Respondent Oppenheimer further maintained that neither Oppenheimer nor D'Amadeo could reasonably be deemed liable for whatever may have occurred after the account left Oppenheimer and denied all allegations of wrongdoing, and all liability, for whatever may have ensued between Mazzella and a competitor firm.

Respondent Oppenheimer also maintained that Claimants failed to state a claim upon which relief could be granted; Claimants have waived their objection to and/or ratified every transaction in their accounts by continuing to pursue the strategies to which they later objected to; Claimants are barred from recovery on equitable grounds, including failing to exercise their own due diligence, unclean hands, and laches; and that some, or all, of the claims are barred by applicable periods of limitation.

Respondent D'Amadeo denied all allegations of wrongdoing alleged by Claimants in their Statement of Claim. Respondent D'Amadeo maintained that Mazzella was himself solely responsible for establishing the investment objectives and making the investment decisions for Claimants' accounts including, but not limited to, what issue to purchase or sell, the form of security, the amount to purchase or sell, and the timing of all transactions. Respondent D'Amadeo further maintained that Claimant Anne Mazzella did not personally trade in her account, nor did she communicate to Respondent any of the investment decisions made by her husband; that Mazzella's custom since the early 1980's was to open accounts at brokerage firms in Anne Mazzella's name and have her grant complete discretionary power over the account to Mazzella; and that Anne Mazzella executed the option agreement to permit her husband to trade as he

pleased. Respondent D'Amadeo further alleged that in addition to Mazzella's contacts with D'Amadeo, Mazzella spoke to the branch office manger on a regular basis beginning in early 1988; that Mazzella represented to the branch office manager that he was in control of the account and pursuing his own strategy; and that the manager wanted to confirm this statement and forwarded an "activity letter" to Anne Mazzella. As a result, Respondent maintained, receipt of this letter created friction between Mazzella and D'Amadeo. Respondent also alleged that Mazzella later threatened to sue the Respondents and, therefore, the manager ordered the account closed. Moreover, Respondent D'Amadeo maintained that he complied with these instructions and by May 1, 1989, Mazzella instructed that the few positions in the account be transferred to another brokerage firm; that D'Amadeo did not have any further contact with Mazzella from that date to the present; and that D'Amadeo has had no involvement in Mazzella's investments outside of the Oppenheimer account.

Respondent D'Amadeo maintained that with respect to the account of Louis and Michael Mazzella, there are no allegations in the Statement of Claim directly related to that account; that the trading was controlled by the sons themselves; and that in five months of trading they realized over a 22% annual return on their initial investment.

Respondent D'Amadeo asserted that the claims set forth in the Statement of Claim are barred by one or more applicable Statute of limitations and the recent ruling by the United States Supreme Court in Lampf, Pleva vs. Gilbertson; that Claimants failed to state a claim upon which relief could be granted; and that the claims are barred by the doctrines of estoppel, waiver, laches and ratification.

As his Counterclaim, Respondent D'Amadeo alleged that Louis Mazzella Sr. made numerous written and oral representations, and warranties to the Respondents in order to induce them to open the various accounts, including margin and option accounts, with Respondents.

As his Third-Party Claim against Louis Mazzella, Sr., Respondent D'Amadeo alleged that Louis Mazzella is responsible for any alleged losses caused by his trading decisions.

RELIEF REQUESTED

Claimants requested an award of damages against the Respondents in such sums as established upon the hearing of this matter together with the costs and forum fees attendant thereon. The total damages including sums lost, plus amounts promised but not received, totals \$6,428,853.00 (direct losses total at least \$2,210,778.00 and loss profits total \$4,218,075.00).

Respondent Oppenheimer requested that all claims made by the Claimants herein be dismissed in all respects, with all hearing costs and forum fees being assessed

in full against Claimants.

Respondent D'Amadeo requested that the Statement of Claim be dismissed and that any and all costs of this proceeding be assessed against the Claimant and an award in favor of Respondent D'Amadeo on his Counterclaim and Third-Party Claim for costs in defending this action, including attorney fees, other costs and expenses, and other relief the panel deems appropriate.

Claimants requested that the Counterclaim of D'Amadeo be dismissed.

OTHER ISSUES CONSIDERED & DECIDED

By letter dated September 2, 1994 Claimants' counsel, John J. Phelan, III, Esq. requested that the Arbitrators re-open the hearings and schedule an additional hearing session before the arbitrators to provide additional testimony to assist the arbitrators in evaluating credibility and determining the facts. Respondents' counsel, Lloyd Clareman, Esq. responded to the request by letter dated September 9, 1994. Respondents' counsel objected to the request that the hearing be reopened after closing arguments had already been made and the case submitted to the arbitrators for their consideration. The panel determined to deny the Motion to Reopen the hearings.

AWARD

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

1. All claims against the Respondents be and hereby are dismissed in their entirety.
2. All claims against the Claimants asserted by Respondent D'Amadeo be and hereby are dismissed in their entirety.
3. All claims against Third-Party Respondent Mazella by Respondent D'Amadeo be and hereby are dismissed in their entirety.
4. Except as otherwise provided in the "Forum Fees" portion of this award, each party shall bear their respective costs, including attorneys' fees.

FORUM FEES

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

6 sessions X \$1,500 = \$9,000.00 minus hearing session deposit of \$2,200.00 =
net \$6,800.00 due.

1. Claimants be and hereby are jointly and severally assessed the sum of \$3,400.00 representing one-half of all outstanding forum fees.
2. Respondents Oppenheimer and D'Amadeo be and hereby are jointly and severally assessed the sum of \$3,400.00 representing one-half of all outstanding forum fees.

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

Arbitrator's Signature
Name

Barry Koch, Esq.
Chairperson - Public Arbitrator

Melvin Lyon
Public Arbitrator

Matthew J. Tolán
Matthew Tolán
Industry Arbitrator

STATE OF NY

COUNTY OF NY

On this 8th day of October, 1994, before me personally
appeared Matthew Tolán known to me to be the individual
described in and who executed the foregoing instrument and duly acknowledged
to me that he/she executed the same.

Deborah A. DeJesus

DEBORAH A. DEJESUS
Notary Public, State of New York
No. 02DE5022979
Qualified in New York County
Commission Expires January 24, 1996

Date of Decision: October 11, 1994

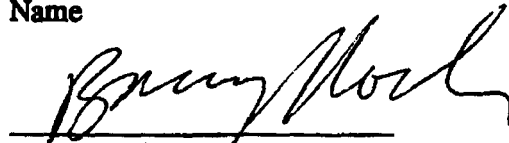
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Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrator's Signature

Name



Barry Koch, Esq.

Chairperson - Public Arbitrator

Melvin Lyon

Public Arbitrator

Matthew Tolan

Industry Arbitrator

STATE OF *New York*

COUNTY OF *Manhattan*

On this 7 day of Oct, 1994, before me personally appeared Barry Koch known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.



WILLIAM MITNICK
Notary Public, State of New York
No. 30-4603938

Qualified in Nassau County
Certificate filed in Westchester County
Commission Expires September 30, 1996

Date of Decision: October 11, 1994

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1. Claimants be and hereby are jointly and severally assessed the sum of \$3,400.00 representing one-half of all outstanding forum fees.
2. Respondents Oppenheimer and D'Amadeo be and hereby are jointly and severally assessed the sum of \$3,400.00 representing one-half of all outstanding forum fees.

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

Arbitrator's Signature
Name

Barry Koch, Esq.
Chairperson - Public Arbitrator

Melvin Lyon
Melvin Lyon
Public Arbitrator

Matthew Tolan
Industry Arbitrator

STATE OF CT

COUNTY OF Bergen

On this 6th day of Oct, 1994, before me personally appeared Melvin Lyon known to me to be the individual described in and who executed the foregoing instrument and duly acknowledged to me that he/she executed the same.

[Signature]
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES 6/23/95

Date of Decision: October 11, 1994