

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration BetweenName of Claimant

Steven Cohan

92-03896

Name of Respondent

Oppenheimer & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on November 17, 1992, Claimant Steven Cohan, by and through his counsel William C. Williams, Esq., of Bell, Metzner, Gierhart & Moore, S.C., Madison, WI, alleged that in September 1989 he retained Respondent Oppenheimer & Co., Inc. by and through Tom Piche to handle his account and throughout the relationship, Claimant had an agreement that Respondent would notify him if the price of securities Claimant purchased through Mr. Piche fell 20% below the purchase price. Claimant further alleged that on March 9, 1992 Respondent, by and through Mr. Piche, recommended that he purchase Scorpion Technology stock on margin whereby Claimant purchased 3,000 shares on margin at \$6.00 per share. Claimant contended that to his knowledge he was not able to follow the stock's performance through the newspapers and the stock price dropped 20% from Claimant's purchase price by March 30, 1992. Claimant further contended that Respondent advised him that Mr. Piche left the firm on May 6, whereby Claimant did not hear from Respondent until some time after that when Mr. Kirk Willock informed Claimant he would be handling his account and reported that the stock's price fell to 3 7/8. Claimant asserted that he asked Respondent, by and through Mr. Willock, how to handle the stock and when Mr. Willock spoke to him later, he told Claimant that the stock was at 2 13/16, at which time, Claimant would have to sell or pay more to cover the margin whereby, Claimant eventually was forced to sell the stock at a loss of 2 5/8 per share. Claimant further asserted that because of Respondent's breach of the broker's agreement to timely notify Claimant of declines, Claimant suffered losses in his account.

Respondent Oppenheimer & Co., Inc., by and through their in-house counsel, Eugene L. Small, Esq., maintained that even if Claimant Steven Cohan's allegations concerning the so

called agreement were accepted as true, which it is not, that alone would not entitle Claimant to reimbursement for the loss above 20% of the purchase price. Respondent further maintained that Claimant merely claims that Mr. Piche agreed to notify him if the price of the securities fell 20% below the purchase price and not that there was an agreement to sell a security if it declined more than 20%. Respondent contended that Claimant's allegations are baseless and he does not state a valid cause of action.

RELIEF REQUESTED

Claimant Steven Cohan requested \$6,525.00 in actual damages plus legal and filing fees together with costs and expenses.

Respondent Oppenheimer & Co., Inc. requested the claim be dismissed and costs be assessed against Claimant.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Herbert Neuer, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on November 11, 1992 and by the Respondent on January 15, 1993.

And, the Arbitrator, having considered the proof of the Parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claim of Claimant Steven Cohan against Respondent Oppenheimer & Co., Inc. is dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant Steven Cohan shall be retained by the NASD, Inc. Respondent Oppenheimer & Co., Inc. is liable and shall pay to the Claimant the sum of \$75.00 as partial reimbursement.

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Page Three
Award 92-03896

AFFIRMATION

I, **HERBERT NEUER, ESQ.**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: April 23, 1993