

PUBLIC

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

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In the Matter of the Arbitration Between

Name of Claimants

Steven and Elizabeth Hooper

92-04129

Name of Respondent

Oppenheimer & Co., Inc.

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CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on December 8, 1992, Claimants Steven and Elizabeth Hooper who appeared Pro Se, alleged that from October, 1988 to September, 1989 they entered into three investments recommended by two different brokers from Respondent Oppenheimer & Co., Inc. and none of these investments performed as promised. Claimants further alleged that the brokers who solicited their business deliberately misrepresented the downside risks associated with these instruments and ignored Claimants' specific instructions for handling the account. Claimants contended that a reputable firm should be accountable to their customers and required to operate within an ethical framework. Claimants further contended that their broker Jeff Wilburn of Respondent informed them that the probability of a gain versus a loss with options was at least 3 to 1, whereby Claimants invested \$5,000.00 which was reduced to zero in 2 months. Claimants asserted that Mr. Wilburn ignored their specific instructions not to take the account below \$2,500.00 and to inform Claimants prior to investing more than \$1,000.00 at a time, whereby this was a breach of contract. Claimants further asserted that Michael Westpheling, another of Respondent's brokers assured them that he had an excellent trade record and would not recommend the type of investments Mr. Wilburn sold and highly recommended Harcourt Brace Jaconowich as a "sure hit" whereby Claimants purchased 300 shares for \$5,091.74 on the basis of this strong endorsement. Claimant argued that the stock in fact was high risk and should not have been recommended to Claimants as a "sure hit" and eventually it was worth \$193.00. Claimants further argued because of Respondent's actions, they suffered a loss in their account.

Respondent, Oppenheimer & Co., Inc. by and through their in-house counsel Eugene L. Small, Esq., maintained that when Claimants Steven and Elizabeth Hooper opened their account they indicated their investment objectives as a willingness to speculate which was denoted in

Claimants' New Account Application as "business risk-appreciation". Respondent further maintained that Claimants signed an Option Account Information Form where they specifically acknowledged their understanding of the risks involved in trading options and that they received a risk disclosure document. Respondent contended that in a June 1, 1992 letter from Respondent, Claimants received \$2,600.00 back from Respondent in connection with their complaint in 1990 about the options trading in their account, nevertheless, Claimants now seek to recover the same money they were given more than 2 years ago. Respondent further contended that as experienced investors, Claimants certainly knew that nothing was a "sure thing" and there was market risk in every stock.

#### **RELIEF REQUESTED**

Claimants Steven and Elizabeth Hooper requested \$9,190.00 in actual damages.

Respondent Oppenheimer & Co., Inc. requested the claim be dismissed in its entirety and costs be assessed against Claimants.

#### **AWARD**

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, A. Bentley Nettles, Esq., was selected to review and determine the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on December 4, 1992 and by the Respondent on January 27, 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:

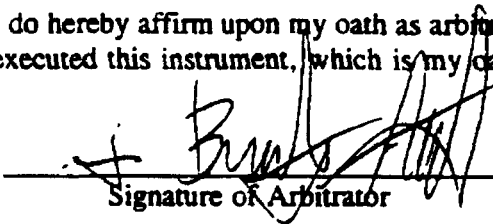
1. The claim of Claimants Steven and Elizabeth Hooper against Respondent Oppenheimer & Co., Inc. is dismissed.
2. The parties shall bear their respective costs.
3. The \$150.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants Steven and Elizabeth Hooper shall be retained by the NASD.

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**AFFIRMATION**

I, A. Bentley Nettles, 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.

  
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Signature of Arbitrator

Date of Decision: June 1, 1993