

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Bernard Wiernik,
Vera Wiernik, Trustees

vs.

NASD #93-00087

Name of Respondents

Oppenheimer & Company, Inc.,
William Odenthal

REPRESENTATION

For Claimants: David Dotson, Esq., Law Offices of David Dotson, of San Diego, California.

For Respondents: Eugene Small, Esq., Oppenheimer & Company, of New York, New York

CASE INFORMATION

Statement of Claim filed: January 11, 1993

Claimant's Submission Agreement signed: December 30, 1992

Statement of Answer filed by Respondents on: February 18, 1993

Respondents' Submission Agreements signed on: Respondent Oppenheimer & Co. on February 17, 1993. Respondent William Odenthal did not file a Submission Agreement, but filed an Answer, appeared at the hearing and is subject to National Association of Securities Dealers, Inc. (NASD) jurisdiction in accordance with Section 12 of the NASD Code of Arbitration Procedure.

HEARING INFORMATION

Prehearing Conference(s) Date(s)/(Sessions): August 6, 1993 (one session)

Hearing Date/(Sessions): August 13, 1993 (two sessions)

Hearing Location: San Diego, California

CASE SUMMARY

Claimants alleged: Misrepresentation, fraud, and lack of suitability in the purchase of common stock of Everex Systems, Inc. (Everex). Claimants opened an account with Respondent Oppenheimer and Co. (Oppenheimer) on January 24, 1992, through Respondent William Odenthal (Odenhal). They advised Odenthal that they were very conservative investors seeking income plus appreciation and preservation of capital. Both claimants are both over 70 years old.

Odenhal called Claimants several times to sell them stock in Everex, with "glowing statements of the great future" for the company. Claimants purchased the stock after "much selling pressure" on the condition that they had only a one point downside risk and that if it ever dropped to 5 7/8 they would be sold out. The stock dropped below that price but Claimants were not sold out but advised to buy more shares, which they did again under pressure. Claimants' complaints to Oppenheimer did not result in any solution.

Respondents denied the allegations of impropriety set forth in the Statement of Claim and alleged: Claimant Bernard Wiernik informed Odenthal on opening the account that Claimants had annual income of \$100,000 and net worth, excluding residence, in excess of \$1,000,000. He also stated he had 30 years investment experience with both stock and bonds and Claimants' objectives were both income and growth.

Odenhal forwarded Claimants research reports on Everex and they directed the purchase of the stock. Bernard Wiernik suggested the further purchase to average down and was dissuaded from purchasing more by Odenthal. Claimants are sophisticated and wealthy individuals who understood the risk in making a relatively minor investment in a small computer company. Because Everex traded over-the-counter, Odenthal could not place a stop-loss order. Respondents also alleged various affirmative defenses.

RELIEF REQUESTED

Claimants requested:

1. Compensatory damages of \$17,131.35;
2. Treble and Punitive Damages in the amount of \$100,000;
3. Damages of \$5,000 pursuant to California Civil Code Section 1780, requested at the hearing.

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 originals remain on file with the NASD.

Claimants' Motion for Sanctions, made prior to the hearing, is denied.

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. All claims are dismissed;
2. The claims for treble and punitive damages are dismissed.;
3. The parties shall each bear their respective attorney's fees;
4. The parties shall each bear their respective costs.

OTHER COSTS

None.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following forum fees are assessed: The National Association of Securities Dealers, Inc. shall retain the \$ 750 hearing session deposit previously deposited by the claimant. Forum fees assessed against:

Claimant in the amount of \$1,050

calculated as follows: One prehearing sessions at \$ 300/prehearing session, plus two hearing sessions at \$ 750/hearing session, equals \$1,800, minus \$ 750 already paid by the claimant as a hearing deposit.

Fees are payable to the National Association of Securities Dealers,

ARBITRATION PANEL

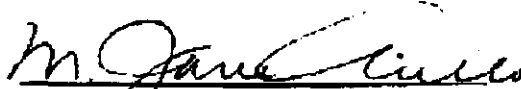
Name

Public/Industry

M. Jane Aiello, Esq.
William D. Randolph
Donald B. McNelley, Esq.

Public Arbitrator
Public Arbitrator
Industry Arbitrator

Concurring Arbitrators' Signature


M. Jane Aiello, Esq.

DATE SERVED: 08/24/93

William D. Randolph

Donald B. McNelley, Esq.

Date of Decision: Aug. 13, 1993