

NASD REGULATION, INC.
AWARD

In the Matter of the Arbitration Between

Names of Claimants

Ferdinand A. Neidhardt and Erich Hoepfer

v.

93-01029

Names of Respondents

Oppenheimer & Co., Inc., Stephen R. DeSimone, Friedrich Herrling, Gerard Biemer, Ursula Herrling, Euro-American Funding, Inc. (a/k/a Europäische Finunzerings, Inc.), and Bonus Finanzierungsvermittlung Ursula Herrling GmbH

REPRESENTATION

For Claimants Ferdinand A. Neidhardt and Erich Hoepfer ("Claimants") appeared Lawrence F. Ruggiero, Esq., a sole practitioner in New York, New York.

For Respondent Oppenheimer & Co., Inc. ("Respondent Oppenheimer") appeared Robert M. Abrahams, Esq., of the law firm of Schulte Roth & Zabel, New York, New York.

Respondent Stephen R. DeSimone ("Respondent DeSimone") did not make an appearance.

Respondents Friedrich Herrling, Gerard Biemer, Ursula Herrling, Euro-American Funding, Inc. ("EAF") and Bonus Finanzierungsvermittlung Ursula Herrling GmbH ("Bonus") are not subject to the jurisdiction of the NASD and were consequently dismissed upon Claimants' Motion prior to the commencement of hearings.

CASE INFORMATION

Claimants' Statement of Claim was filed on March 17, 1993.

Claimants' Amended Statement of Claim was filed on March 4, 1996.

Claimant Ferdinand A. Neidhardt's Submission Agreement was signed on March 5, 1993.

Claimant Erich Hoepfer's Submission Agreement was signed on March 12, 1993.

Respondent Oppenheimer's Statement of Answer was filed on September 18, 1995.

Respondent Oppenheimer's Statement of Answer to the Amended Statement of Claim, and Third

Party Claims for indemnification of EAF and Bonus, were filed on March 26, 1996.

Respondent Oppenheimer's Submission Agreement was signed on September 15, 1995.

Respondent DeSimone's Statement of Answer and Cross-Claim of Indemnification against Respondent Oppenheimer were filed on January 23, 1996.

Respondent DeSimone did not file a Submission Agreement.

HEARING INFORMATION

Pre-Hearing Conferences:	February 3, 1997	-	1 session
	March 18, 1997	-	1 session
	April 15, 1998	-	1 session
Hearing Dates/Sessions:	July 13, 1998	-	1 session
	July 17, 1998	-	2 sessions
	July 20, 1998	-	2 sessions
	July 23, 1998	-	2 sessions
	July 24, 1998	-	2 sessions
	July 27, 1998	-	2 sessions
	July 30, 1998	-	2 sessions
	July 31, 1998	-	2 sessions
	September 11, 1998	-	2 sessions
	September 18, 1998	-	2 sessions
	October 23, 1998	-	2 sessions

The hearings were conducted at the offices of NASD Regulation, Inc. located in New York, New York.

CASE SUMMARY

This arbitration matter arose from Claimants' investment of funds in customer accounts maintained with Respondent Oppenheimer.

Claimants alleged that, in January, 1991, they learned of investment opportunities with Respondent Oppenheimer through an investment seminar program held in Zurich, Switzerland. Claimants further alleged that Respondent DeSimone, a vice president of Respondent Oppenheimer, personally solicited Claimants to invest their funds through this program, while operating from his office in New York. According to Claimants, Respondent DeSimone informed them that Claimants' funds would be placed in an account for their sole benefit, and that Claimants' funds could be withdrawn only with Claimants' authority and signatures. Claimants contended that, in actuality, Claimants' funds were placed in a corporate account, Euro-American Funding, that did not bear Claimants' names and over which Claimants had no control.

Claimants stated that commencing on or about March 13, 1991, Claimants made five wire transfers of funds, totaling approximately \$3,154,000.00, to Oppenheimer. Claimants alleged that, within seven months, Respondent DeSimone, and others exercising control over the

account, wrongfully converted all of the account funds. Claimants further alleged that the various means employed by Respondents, with respect to this wrongful conversion, included but were not limited to: 1) The transfer of more than \$2,000,000.00 to a bank account in Zurich, Switzerland in the name of Bonus, an account controlled by Friedrich and Ursula Herrling; 2) the transfer of a total of approximately \$1,000,000.00 to an Euro-American Funding bank account or accounts in Arizona controlled by Respondents and their accomplices; 3) the writing of checks against Claimants' funds to persons unknown; and 4) by credit card charges to Claimants' account, all without the consent, authorization or knowledge of Claimants.

Respondent Oppenheimer asserted that Claimants invested their funds into an existing account in the name of Euro-American Funding (EAF), maintained by Oppenheimer. According to Respondent Oppenheimer, there was neither improper nor fraudulent conduct with respect to the funds in the EAF account. Respondent Oppenheimer alleged that, at all relevant times, Respondent Oppenheimer maintained a reasonable and comprehensive system of internal controls and supervisory procedures designed to detect and prevent violations of industry rules and regulations, as well as company policies. Respondent Oppenheimer further alleged that the conversion of funds out of the EAF account was not related to any activities within the purview of Respondent Oppenheimer's control.

In his Statement of Answer, Respondent DeSimone denied all allegations asserted by Claimants.

RELIEF REQUESTED

Claimants requested treble RICO damages of \$25,410,000.00, such damages being awarded to compensate Claimants for their actual direct and indirect monetary losses, their mental and emotional damages, and for punitive damages. Claimants alternatively requested actual damages totaling at least \$8,470,000.00, plus pre-judgment interest, treble punitive damages, and costs.

Respondent Oppenheimer requested dismissal of Claimants' Claim, and an award of reasonable attorneys' fees and costs incurred in connection with this proceeding.

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 original remains on file with the NASD.

The panel made the following determinations concerning Respondent DeSimone who did not file a Submission Agreement and who did not appear at the hearing in this matter:

1. Pursuant to Rule 10101 of the Code of Arbitration Procedure (the "Code"), the arbitrators found subject matter jurisdiction over this entire controversy.
2. The panel found that Respondent DeSimone was a person associated with a

member of the NASD at the time this controversy arose. Accordingly, the panel found personal jurisdiction over Respondent DeSimone pursuant to Rule 10301 of the Code.

3. The panel found that Respondent DeSimone was required to file a Submission Agreement with NASD Regulation pursuant to Rule 10314(b) of the Code. In this regard, the panel found that the Statement of Claim was properly served upon Respondent DeSimone pursuant to Rule 10314 (a) of the Code.
4. In addition, in accordance with Rules 10310, 10315 and 10318 of the Code, the panel found that NASD Regulation provided Respondent DeSimone with "due notice" of the hearings conducted in this matter by regular and certified mail. The panel further determined to proceed with the hearing without Respondent DeSimone, whose absences were unexcused.

AWARD

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

1. Respondent Oppenheimer and Respondent DeSimone are hereby jointly and severally liable to and shall pay compensatory damages to Claimants in the amount of \$1,965,000.00, inclusive of interest.
2. Respondent DeSimone is hereby additionally liable to and shall pay punitive damages to Claimants in the amount of \$100,000.00. (Paine Webber, Inc. v. Bybyk, 81 F.3d 1193 (2d Cir. 1996)).
3. All costs related to interpreter/translation services and stenographic reporting shall be shared equally by Claimants and Respondents as follows:

Claimants' Costs for Stenographic Reporting:	\$ 2,912.00
Respondents' Costs for Stenographic Reporting:	\$17,816.00
Claimants' Costs for Translation Services:	\$ 7,264.00
Respondents' Costs for Translation Services:	<u>\$ 1,107.00</u>
Total Costs:	\$29,099.00

Claimants' Share (\$29,099.00 x 0.5)	=	\$14,549.50
minus Claimants' expenditures	-	<u>\$10,176.00</u>
Amount Outstanding	=	\$ 4,373.50

Respondents' Share (\$29,099.00 x 0.5)	=	\$14,549.50
minus Respondents' expenditures	-	<u>\$18,923.00</u>
Amount Outstanding	=	-(\$ 4,373.50)

Therefore, Claimants are hereby liable to and shall reimburse Respondents the sum of \$4,373.50.

4. Each party bears its respective attorneys' fees and travel expenses.
5. All other claims are hereby denied.

FORUM FEES

Pursuant to Rule 10332(c) of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$300.00 non-refundable filing fee deposited by Claimant and have assessed the following Forum Fees:

3 Pre-Hearing Conferences	X	\$1,500.00	=	\$ 4,500.00
21 Hearing Sessions	X	\$1,500.00	=	<u>\$31,500.00</u>
Total Forum Fees			=	\$36,000.00

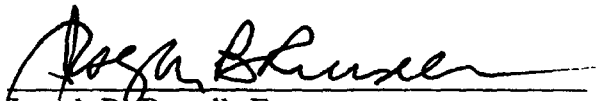
The arbitrators have determined to assess the forum fees of this arbitration equally between the Claimants and the Respondents. Claimants have previously deposited \$1,500.00 with the NASD. Therefore, Claimants Neidhardt and Hoepfer are jointly and severally liable to the NASD in the amount \$16,500.00, and Respondents Oppenheimer and DeSimone are jointly and severally liable to the NASD in the amount of \$18,000.00.

Fees are payable to NASD Regulation, Inc.

ARBITRATION PANEL

Joseph B. Russell, Esq., Public Chairperson
Eugene J. McCabe, Esq., Public Arbitrator
James R. Madan, Industry Arbitrator


CONCURRING ARBITRATOR'S SIGNATURE



Joseph B. Russell, Esq.
Chairperson-Public Arbitrator

Date of decision: December 1, 1998

I, **Joseph B. Russell**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

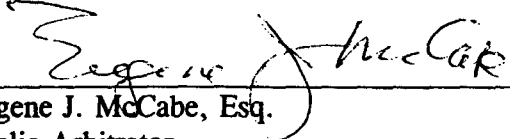


Joseph B. Russell

ARBITRATION PANEL

Joseph B. Russell, Esq., Public Chairperson
Eugene J. McCabe, Esq., Public Arbitrator
James R. Madan, Industry Arbitrator

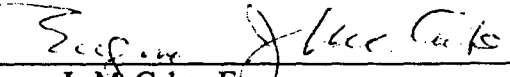
CONCURRING ARBITRATOR'S SIGNATURE



Eugene J. McCabe, Esq.
Public Arbitrator

Date of decision: December 1, 1998

I, **Eugene J. McCabe**, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

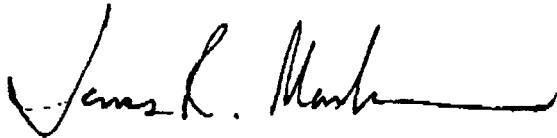


Eugene J. McCabe, Esq.

ARBITRATION PANEL

Joseph B. Russell, Esq., Public Chairperson
Eugene J. McCabe, Esq., Public Arbitrator
James R. Madan, Industry Arbitrator

CONCURRING ARBITRATOR'S SIGNATURE

A handwritten signature in dark ink, appearing to read "James R. Madan", written over a horizontal line.

James R. Madan
Industry Arbitrator

Date of decision: December 1, 1998

I, James R. Madan, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award.

A handwritten signature in dark ink, appearing to read "James R. Madan", written over a horizontal line.

James R. Madan