

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Douglas & Billy W. Wilson

93-01829

Name of Respondent

Oppenheimer & Co., Inc.

**REPRESENTATION**

For Claimants: Douglas and Billy W. Wilson ("Wilson") was represented by Julia D. Mannix, Esq. of Davis, Mannix & McGrath, located in Chicago, Illinois.

For Respondent: Oppenheimer & Co., Inc. was represented by Eugene L. Small, Esq. of Oppenheimer & Co., Inc., located in New York, New York.

**CASE INFORMATION**

Statement of Claim filed: May 7, 1993.

Claimants' Submission Agreement signed on: April 19, 1993.

Statement of Answer filed by Respondent on: July 19, 1993.

Respondent's Submission Agreement signed on: July 19, 1993.

**HEARING INFORMATION**

Pre-Hearing Conference: None Held.

Hearing Dates/Sessions: January 30, 1996 for Two (2) sessions; and  
April 23, 1996 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

**CASE SUMMARY**

Claimants alleged that Oppenheimer recommended and induced the purchase of common stocks and options in a company called Centocor, Inc., by making false and misleading statements or failing to disclose certain facts regarding a drug being reviewed by the FDA. According to the

Claim, Oppenheimer know or should have known that testing irregularities would prevent approval of the drug and, if known, Wilson would never have made the investments. Based upon these allegations, the Claimants asserted claims for breach of contract; common law fraud; violation of the Illinois Securities Law, 111. Rev. Stat., ch. 121 1/2 ¶¶137.1, et seq.; violation of Rule 10b-5, 17 C.F.R. §240.10b-5, of the regulations of the Securities and Exchange Commission promulgated pursuant to Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78(b); violation of Section 12(2) of the Securities Act of 1933, 15 U.S.C. § 771(2); and breach of fiduciary duty.

Respondent Oppenheimer denied the material allegations of the Statement of Claim, alleging that:

1. Centocor was recommended by several highly reputable Wall Street firms including Oppenheimer based upon the belief that the drug would be approved. The finding that there were testing irregularities and the FDA rejection stunned the analysts and caused the price drop;
2. Oppenheimer was unaware of Centocor's faulty testing techniques;
3. Wilson was engaged in speculative trading and was aware of the risk of holding a large position in a volatile stock. In addition, Wilson maintained the position when the price deteriorated.

In addition, Oppenheimer asserted several affirmative defenses.

#### **RELIEF REQUESTED**

Claimants requested entry of an award against Respondent for actual damages in the amount of \$900,000.00; punitive damages in the sum of \$1,000,000.00; reasonable attorneys' fees and expenses; and such other relief as the arbitrators found just and equitable.

Respondent requested that the Statement of Claim be dismissed in its entirety and that the costs of this proceeding be assessed against the Claimants.

#### **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.

#### **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. The Statement of Claim is dismissed with prejudice and denied in its entirety;
2. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
3. Any relief not specifically awarded is hereby denied.

### **FORUM FEES**

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Four (4) hearing sessions x \$1,000.00 per session = \$4,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$250.00 non-refundable claim filing fee and the \$1,000.00 hearing session deposit previously deposited by the Claimants, Douglas and Billy W. Wilson. Respondent Oppenheimer & Co., Inc. is liable for and shall pay to the NASD the sum of \$3,000.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

#### **Concurring Arbitrators' Signatures**

Name

Date

/s/ Bradford S. Allen, Esq.

July 2, 1996

Bradford S. Allen, Esq.

Public Arbitrator

Chairperson

/s/ Judge Joseph A. Salerno

July 5, 1996

Judge Joseph A. Salerno

Public Arbitrator

/s/ Brian E. Slotky

July 2, 1996

Brian E. Slotky

Industry Arbitrator

For NASD Use Only

Date of Decision: July 8, 1996