

**NASD AWARD**

**NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.**

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In the Matter of the Arbitration Between

Name of Claimant

David W. Bethany

and

93-04824

Name of Respondent

Oppenheimer & Co., Inc.

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**REPRESENTATION OF PARTIES**

David W. Bethany ("Claimant") was represented by Jeffrey J. Scott, Esq., Krys Boyle Golz Reich Freedman Bean & Scott, P.C., Denver, Colorado.

Oppenheimer & Co., Inc. ("Respondent") was represented by Joseph C. Pickard, Esq., Oppenheimer & Co., Inc., New York, New York.

**CASE INFORMATION**

The Statement of Claim was filed on or about November 22, 1993. Amended Statement of Claim was filed on or about February 14, 1994. Objection to Motion to Dismiss of Oppenheimer Capital was filed on or about February 14, 1994. Submission Agreement of Claimant David W. Bethany was signed on October 5, 1993.

Statement of Answer was filed by Respondent Oppenheimer & Co., Inc. on or about February 2, 1994. Submission Agreement of Respondent Oppenheimer & Co., Inc. was signed on February 2, 1994 by John T. McGuire.

**HEARING INFORMATION**

A pre-hearing conference was held on Friday, August 12, 1994 for one (1) session with Otto K. Hilbert, II, Esq. presiding.

The hearing was held on Tuesday, August 23, 1994 in Denver, Colorado for a total of two (2) hearing and one (1) pre-hearing sessions.

### CASE SUMMARY

Claimant alleged that Oppenheimer breached their contractual obligation to pay him commissions earned as a result of his efforts to introduce institutions who placed funds for management with Oppenheimer Capital, breached their contractual obligation to act in good faith and fair dealing with him as an employee, and negligently failed to use due care in their treatment of him as an employee. It was also alleged that Respondent breached the NASD Rules of Fair Practice, federal securities laws, the Colorado Securities Act, and engaged in common law fraud. Specifically, Claimant alleged that during his employment at Oppenheimer, he expended considerable time and effort in developing contacts with institutions which, following his initial contacts, placed funds with Oppenheimer Capital for management. Claimant also alleged that he was entitled to commissions under the Oppenheimer commission structure for being the originating broker.

Respondent denied the allegations set forth in the Statement of Claim and the First Amended Statement of Claim. Specifically, Respondent stated that the Claimant would not be entitled to any commissions since his employment ceased with Oppenheimer prior to the existence of any obligation. The following affirmative defenses were asserted by Respondent: the claims are barred by the doctrines of laches and estoppel; the Claimant fails to state a claim upon which relief can be granted; and the claims are barred because Oppenheimer did not act with the requisite *scienter*.

### RELIEF REQUESTED

Claimant requested that an award be entered in his behalf against Oppenheimer & Co., Inc. for compensatory damages, punitive damages, and for his costs and attorneys' fees incurred.

Respondent requested that the claims asserted against it be dismissed.

### OTHER ISSUES CONSIDERED & DECIDED

Oppenheimer Capital was originally named as a Respondent in this matter. Oppenheimer Capital refused to submit to arbitration and being a non member of the NASD is not required to submit to arbitration of any claims asserted against it.

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(s) 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. Respondent Oppenheimer & Co., Inc. shall be and hereby is liable for and shall pay to the Claimant David W. Bethany compensatory damages in the sum of Five hundred thousand dollars (\$500,000).
2. Each party shall bear its own costs, expenses and fees incurred in this matter not specifically enumerated herein.
3. All relief requested not specifically granted herein shall be and hereby is denied.

**FORUM FEES**

Forum fees are calculated at the rate of \$600 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$300 and two (2) sessions x \$600 = \$1,500 in forum fees. Pursuant to §44(b) a hearing session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with an arbitrator, which lasts four (4) hours or less. Pursuant to §44(c) of the NASD Code of Arbitration Procedure, the National Association of Securities Dealers, Inc. ("NASD") shall retain the non-refundable filing fee in the amount of \$250 and shall retain as forum fees the hearing session deposit in the amount of \$600 previously deposited with the NASD by the Claimant. Respondent Oppenheimer & Co., Inc. shall be and hereby is liable for and shall pay to the NASD the sum of \$900 as the balance of forum fees due to the NASD. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators Signatures

Dated:

  
Otto R. Hilbert, II, Esq.

Industry Arbitrator, Presiding Chair

  
John T. (Jack) Christensen

Industry Arbitrator

  
Richard M. Reider

Industry Arbitrator

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