

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Betty P. Hudson

93-05267

Name of Respondents

Oppenheimer & Co., Inc.;
John Phillips

REPRESENTATION

For Claimant: Betty P. Hudson ("Hudson") was represented by John T. McDowell, Esq. of Bankston & McDowell, located in Houston, Texas.

For Respondent: Oppenheimer & Co., Inc. ("Oppenheimer") and John Phillips ("Phillips") were represented by David J. Healey, Esq. of Arnold, White & Durkee, located in Houston, Texas.

CASE INFORMATION

Statement of Claim filed: December 21, 1993.

Claimant's Submission Agreement signed on: December 15, 1993.

Statement of Answer filed by Respondent on:

Respondent Oppenheimer's Submission Agreement signed on: March 7, 1994 by Eugene L. Small, Senior Vice President, Oppenheimer & Co., Inc.

Respondent Phillip's Submission Agreement signed on: January 24, 1994.

HEARING INFORMATION

Pre-Hearing Conference: None Held.

Hearing Date/Sessions: January 20, 1995 for Two (2) sessions.

Hearing Location: Houston, Texas.

CASE SUMMARY

Hudson alleged that Phillips, while employed by or acting as an agent for Oppenheimer, induced the purchase of \$50,000 of convertible debenture bonds in Encore Marketing International, Inc. in September of 1988 through false, misleading and deceptive acts. In addition, Hudson alleged that Phillips misrepresented the quality of the investment to her, that he was negligent and grossly negligent in inducing Hudson to make the investment and that the investment was not suitable in light of Hudson's investment objectives. Hudson asserted that the investment was now worthless.

Respondents denied the material allegations of the Statement of Claim, asserting that Hudson represented that she was an accredited investor with net worth in excess of \$1 million and she executed all appropriate documentation to qualify as such; Hudson has released Respondents by virtue of a general release; and the claim is barred by the express terms of Encore's Notes and the accompanying Trust Indenture. In addition, Respondents asserted a counterclaim alleging that if Hudson was not an accredited investor, she induced the Respondents to participate in the transaction through fraud and is liable for any damages that they suffer.

RELIEF REQUESTED

Claimant requested entry of an award for actual and punitive damages in the sum of \$95,000.00.

Respondent requested that the claim be dismissed and that she be liable for any damages that they suffer, including any legal fees incurred in this proceeding.

OTHER ISSUES CONSIDERED & DECIDED

On January 20, 1995, Respondents filed an Application to Dismiss Based on Release. Hudson responded on January 24, 1995. Respondents replied on January 26, 1995. After review of the documents, the Panel denied the Application and found on the merits.

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 Respondents have no liability for their actions, and the Statement of Claim

and Counterclaim are hereby dismissed with prejudice and denied in the 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 granted is hereby denied.

OTHER COSTS

The NASD shall retain the \$500.00 postponement fee paid by Respondent Oppenheimer & Co., Inc.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: Two (2) hearing sessions x \$500.00 per session = \$1,000.00.

The National Association of Securities Dealers, Inc. shall retain the \$150.00 claim filing fee and the \$500.00 hearing session deposit previously deposited by Claimant Betty P. Hudson. Respondents Oppenheimer & Co., Inc. and John Phillips are jointly and severally liable for and shall pay to the NASD the sum of \$500.00 as forum fees. Fees are payable to the National Association of Securities Dealers, Inc.

Concurring Arbitrators' Signatures

Name

Date

/s/ J. Randle Henderson, Esq.

May 2, 1995

J. Randle Henderson, Esq.

Public Arbitrator

Chairperson

/s/ Campbell A. Griffin, Jr. Esq.

May 2, 1995

Campbell A. Griffin, Jr., Esq.

Public Arbitrator

/s/ Thomas A. Thornhill, Esq.

May 2, 1995

Thomas A. Thornhill, Jr.

Industry Arbitrator

For NASD Use Only

Date of Service of Award: May 8, 1995