

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimants

Teri Kahn Cohen; Ludwig Kahn, TTEE/Dianna Kahn Trust;
Ludwig Kahn, TTEE/Heidi Kahn Trust;
Ludwig Kahn, Randolph Kahn; Theodore L. & Lillian Kahn Joint Trust;
Morris Katz; John Persa

and

94-01812

Name of Respondents

Oppenheimer & Company, Inc.
Patrick Jage

REPRESENTATION OF PARTIES

Teri Kahn Cohen, Ludwig Kahn, TTEE/Dianna Kahn Trust, Ludwig Kahn, TTEE/Heidi Kahn Trust, Ludwig Kahn, Randolph Kahn, Theodore L. & Lillian Kahn Joint Trust, Morris Katz, and John Persa (collectively as "**Claimants**") were represented by Diane J. Silverberg, Esq., Tishler & Wald, Ltd., Chicago, Illinois.

Oppenheimer & Company, Inc. ("**Respondent Oppenheimer**") and Patrick Jage ("**Respondent Jage**") were represented by Eugene L. Small, Esq., Oppenheimer & Company, Inc., New York, New York.

CASE INFORMATION

The Statement of Claim was filed on or about May 16, 1994. Submission Agreement of Claimant Teri Kahn Cohen was signed on June 14, 1994. Submission Agreement of Claimant Ludwig Kahn, TTEE/Dianna Kahn Trust was signed on June 13, 1994 by Ludwig Kahn. Submission Agreement of Claimant Ludwig Kahn, TTEE/Heidi Kahn Trust was signed on June 13, 1994 by Ludwig Kahn. Submission Agreement of Claimant Ludwig Kahn was signed on May 5, 1994. Submission Agreement of Claimant Randolph Kahn was signed on May 9, 1994. Submission Agreement of Claimant Theodore L. & Lillian Kahn Joint Trust was signed on June 13, 1994. Submission Agreement of Claimant Morris Katz was signed on May 6, 1994. Submission Agreement of Claimant John Persa was signed on May 6, 1994.

Statement of Answer was filed by Respondents Oppenheimer & Company, Inc. and Patrick Jage on or about September 15, 1994. Submission Agreement of Respondent Oppenheimer & Company, Inc. was signed on September 13, 1994 by Eugene L. Small, Esq.

HEARING INFORMATION

A pre-hearing conference was held on May 15, 1995 for one (1) session with Steven F. Pflaum, Esq., presiding.

The hearing was held on September 12, 1995 for two (2) sessions, September 13, 1995 for two (2) sessions, November 20, 1995 for two (2) sessions, and November 21, 1995 for two (2) sessions in Chicago, Illinois for a total of one (1) pre-hearing and eight (8) hearing sessions.

CASE SUMMARY

Claimants alleged that Respondent Jage made material misrepresentations in connection with the purchases and sales of Metro Airline bonds; Barriers for Disease Control stock; Tribune and Swab/Fox stock. Claimants alleged that the actions of Respondent Jage constituted violations of the Securities Exchange Act of 1934; violations of the Illinois Securities Act; fraud; negligent misrepresentation; breach of fiduciary duty; and breach of contract.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically stated that the first Claimant to open an account with Respondent Oppenheimer was Randolph Kahn. Subsequent to the opening of Randolph Kahn's account, the remaining Claimants opened accounts. Respondents stated that all activity in the Kahn family accounts was directed and controlled by Randolph Kahn, an astute, knowledgeable investor. Respondents further stated that Theodore and Ludwig Kahn were individually wealthy sophisticated investors.

RELIEF REQUESTED

Claimants requested an award in an amount not less than \$50,000 and equal to the losses they sustained, punitive damages for Respondents' willful and wanton acts and omissions, interest, costs, attorneys' fees and such other relief as the panel may deem just and proper under the circumstances.

Respondents requested that the claims asserted against them be denied in its entirety and that they be awarded their costs and attorneys' fees.

OTHER ISSUES CONSIDERED & DECIDED

Respondent Patrick Jage did not file with the NASD a properly executed submission to arbitration but is required to submit to arbitration pursuant to §12 of the NASD Code of Arbitration Procedure

(the "Code") and having answered the claim, appeared and testified at the hearing is bound by the determination of the arbitration panel on all issues submitted.

The claims asserted on behalf of Claimants Morris Katz and John Persa were withdrawn prior to the commencement of the hearing of this matter.

At the commencement of the hearing, Claimants asserted a Motion for Judgment on the Pleadings due to alleged violations of discovery rules by Respondents. After considering the arguments of the parties, the arbitration panel denied the motion.

At the conclusion of the Claimants' case in chief, Respondents asserted a Motion for Directed Verdict. After considering the arguments of the parties, the arbitration panel denied the motion.

Prior to the commencement of the hearing on November 20, 1995 and November 21, 1995, Respondents requested that Arbitrator Stephen E. Smith, Esq. remove himself from the case. After considering the respective positions of the parties, Canon IIE of the Code of Ethics for Arbitrators in Commercial Disputes, Mr. Smith removed himself from the panel. The parties agreed to proceed with the two remaining arbitrators pursuant to §24 of the NASD Code of Arbitration Procedure.

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 and the post-hearing submissions, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Oppenheimer & Company, Inc. and Patrick Jage shall be and hereby are jointly and severally liable for and shall pay to the Claimant Teri Kahn Cohen the sum of \$2,756.
2. Respondents Oppenheimer & Company, Inc. and Patrick Jage shall be and hereby are jointly and severally liable for and shall pay to the Claimant Ludwig Kahn, TTEE/Dianna Kahn Trust the sum of \$1,690.
3. Respondents Oppenheimer & Company, Inc. and Patrick Jage shall be and hereby are jointly and severally liable for and shall pay to the Claimant Ludwig Kahn, TTEE/Heidi Kahn Trust the sum of \$1,690.
4. Respondents Oppenheimer & Company, Inc. and Patrick Jage shall be and hereby are jointly and severally liable for and shall pay to the Claimant Ludwig Kahn the sum of \$1,677.

5. Respondents Oppenheimer & Company, Inc. and Patrick Jage shall be and hereby are jointly and severally liable for and shall pay to the Claimant Randolph Kahn the sum of \$28,631.
6. Respondents Oppenheimer & Company, Inc. and Patrick Jage shall be and hereby are jointly and severally liable for and shall pay to the Claimant Theodore L. & Lillian Kahn Joint Trust the sum of \$1,964.
7. Each party shall bear its own costs, expenses and attorneys' fees incurred in this matter not specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$500 per hearing session and \$300 for each prehearing conference, if any. There was one (1) session x \$300 and eight (8) sessions x \$500 = \$4,300 in forum fees. Pursuant to §43(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 §43(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 \$150 and shall **retain** as forum fees the hearing session deposit in the amount of \$500 previously deposited with the NASD on behalf of the Claimants. Respondents Oppenheimer & Company, Inc. and Patrick Jage shall be and hereby are jointly and severally liable for and shall pay to the NASD the sum of **\$3,800** as the balance due for forum fees. Respondents Oppenheimer & Company, Inc. and Patrick Jage shall be and hereby are jointly and severally liable for and shall pay to the Claimants the sum of **\$500** as reimbursement for the hearing session deposit previously made by Claimants.

Pursuant to §45 of the NASD Code of Arbitration Procedure, the NASD shall **assess** and Respondent Oppenheimer & Co., Inc. shall pay to the NASD the non-refundable member surcharge in the amount of \$200. **Fees are payable to the National Association of Securities Dealers, Inc.**

Dated:

/s/ Steven F. Pflaum, Esq.
Steven F. Pflaum, Esq.
Public Arbitrator, Presiding Chair

February 5, 1996

/s/ Jay K. Buck
Jay K. Buck
Industry Arbitrator

February 5, 1996