

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

John J. Nicolich

vs.

94-02057

Name of Respondent

Oppenheimer & Co., Inc.

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 1, 1994, Claimant John Nicolich, who appeared Pro Se, alleged that Respondent Oppenheimer & Co., Inc. improperly charged him commissions. Claimant further alleged that he was approached by John S. Sturges, who worked at Shearson Lehman Brothers, in 1991, to open a "commission free" managed account. Claimant contended that he initially started the account with the \$25,000.00 minimum in February, 1992 and subsequently increased the amount to around \$50,000.00. Claimant further contended that any and all transactions executed were free of any commission charges. Claimant alleged that on January 14, 1994, John S. Sturges informed him that he had a change in employment and was now employed by the Respondent, Oppenheimer & Co., Inc. Claimant further alleged that he was told that if he transferred his account over to Respondent, "it would be an identically managed account with the purchases and sales on a commission-free basis" as had been the case up until that time. Claimant contended that upon examination of his first confirmations of sale from the Respondent, the sales had been executed on a commission free basis but that he was later informed that since the account was below the required minimum of \$50,000.00, an addition investment of \$11,000.00 would be necessary to keep it on a commission free basis. Claimant contended that he had no alternative except to close the account. Claimant further contended that since every transaction up until that time had been commission free no matter which of the two brokerage firms were involved, he could only believe that the transactions executed to close the account should also be commission free, but instead he was charged \$1,253.31. As a result of the above, Claimant alleged that he has suffered damages for which the Respondent should be held liable.

Respondent Oppenheimer & Co., Inc., through its representative Michelle A. Murphy, maintained Claimant was informed that in order to have a managed "OMEGA" account at Respondent, a client would have to maintain a \$100,000.00 balance. Respondent further maintained that Mr. Sturges told Claimant that as an accommodation, Respondent would allow him to open an OMEGA account with a \$50,000.00 minimum for six months, after which he would have to raise the asset value to \$100,000.00. Respondent contended that on or about February 28, 1994, Claimants account transferred to Respondent with less than \$50,000.00 in assets but in anticipation of receiving the additional monies needed for the OMEGA account, Respondent did the initial 3 trades on a commission free basis. Respondent further contended that when Claimant informed it that he could not bring the account to the \$50,000.00 level, he opted to close his account rather than maintain it on a discounted commission schedule. As a result of the above, Respondent maintained that it should not be held liable in this matter.

RELIEF REQUESTED

Claimant John Nicolich requested \$1,253.31 in actual damages.

Respondent Oppenheimer & Co., Inc. requested that the claims of the Claimant be dismissed.

AWARD

Pursuant to Section 13 of the National Association of Securities Dealers, Inc. Code of Arbitration Procedure, a single Public Arbitrator, Henry Balter, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimant on July 7, 1994 and by the Respondent on August 18, 1994.

And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. The claims of Claimant John Nicolich against Respondent Oppenheimer & Co., Inc. are dismissed in their entirety.
2. The parties shall bear their respective costs.
3. The \$50.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimant shall be retained by the NASD, Inc.

AFFIRMATION

I, **HENRY BALTER**, do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument, which is my oath and award.

Henry B. Balter
Signature of Arbitrator

DATE OF DECISION: March 6, 1995

STATE OF: New York

SS:

COUNTY OF: New York

On this 27th day of February, 1995, before me personally appeared Henry Balter to me known and known before me to be the individual described in and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.

Warren C. Bradley

WARREN C. BRADLEY
Notary Public, State of New York
No. 60-4872487
Qualified in Westchester County
Certificate filed in New York County
Commission Expires October 2, 1996