

NASD AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS, INC.

In the Matter of the Arbitration Between

Name of Claimant

Sue Kipling Isbell

and

NASD Case Number 94-02162

Names of Respondents

**Oppenheimer & Company, Incorporated
and Victor F. Wratten**

REPRESENTATION OF PARTIES

— Claimant, Sue Kipling Isbell was represented by Gregory N. Jones, Esq. located in Houston, Texas.

Respondents, Oppenheimer & Co., Inc. and Victor F. Wratten were represented by Andrew R. Harvin, Esq. of Doyle, Rider, Restrepo, Harvin & Robbins, L.L.P. located in Houston, Texas.

CASE INFORMATION

The Statement of Claim was filed on or about June 8, 1995.

The Submission Agreement of Claimant was signed on June 7, 1995.

The Joint Statement of Answer was filed on or about August 17, 1995.

The Submission Agreement of Respondent, Oppenheimer & Co., Inc. was signed on August 18, 1995 by Joseph C. Pickard, Senior Vice President.

HEARING INFORMATION

The hearing was held in Houston, TX on the following dates:

- March 12, 1996 for two (2) sessions
- March 13, 1996 for two (2) sessions

CASE SUMMARY

In the Statement of Claim, Sue Kipling Isbell ("Isbell") made allegations against Oppenheimer & Co., Inc. ("Oppenheimer") and Victor F. Wratten ("Wratten") including unsuitability, misrepresentation, failure to follow instructions, failure to supervise, fraud, negligence, gross negligence and various violations of the Texas Deceptive Trade Practices Act ("DTPA"). Upon receipt of 4200 shares of Stewart & Stevenson Services, Inc. stock and \$50,000.00 cash from a divorce settlement in 1982, Isbell allegedly purchased 1000 shares of Appalachian Power Company stock based on Wratten's recommendation for her non-discretionary accounts. As alleged, Isbell told Wratten that she was dependent on the earnings from the funds of the divorce as well as the \$156,000.00 she inherited from her mother's estate in 1990 for living expenses and long term financial well being. Claimant contended that Wratten embarked on a scheme designed to maximize his commissions and expenses by engaging in inappropriate and extraordinarily risky trading beginning on November 1, 1991. Claimant further contended that one year after Wratten initiated his unauthorized scheme, the Respondents updated their internal records to indicate a change in Claimant's trading goals in order to internally cover Wratten's trading strategy. Isbell claimed that Oppenheimer, by and through Wratten, made numerous misrepresentations and false statements to Claimant which Wratten knew or should have known were false. Claimant alleged that she acted in reliance upon Wratten's representations and thereby suffered damages as a result. Claimant further alleged that Respondents' conduct and actions were committed willfully and with blatant disregard and gross indifference for the welfare and interest of Claimant.

Respondents, Oppenheimer & Co., Inc. and Victor F. Wratten denied the allegations contained in the Statement of Claim. Respondents specifically alleged that the Claimant's investment objectives were listed as fixed-income, income/moderate growth and business-risk appreciation and that her account form was updated in late, 1992 to include an objective of short-term trading. Respondents maintained that each and every trade was authorized and approved by Claimant. Respondent further maintained that Isbell was suitable for all transactions in the account and that Claimant stated she wanted to invest a portion of her portfolio in more aggressive stocks. According to the Respondents, Claimant generated over \$300,000.00 in margin debt by borrowing cash from her account in order to recoup funds she had loaned to a friend and to generate funds for a down payment on a house. Respondents asserted the following affirmative defenses:

1. Respondents acted in compliance with all applicable rules and regulations and acted in good faith and did not induce the alleged act or acts, if any, constituting alleged violations of law;
2. The damages allegedly suffered by Claimant had no causal relationship with any act committed by or legally attributable to Respondents;

3. Claimant did not reasonably rely to her detriment on any action or inaction of Respondents or any action or inaction legally attributable to Respondents;
4. The allegations relating to compensatory and exemplary damages were merely conclusory and fail to set forth ultimate facts sufficient to state a claim for recovery of such damages;
5. Claimant, through her actions or deeds, waived her rights to maintain this action against Respondents and ratified all transactions in her account;
6. Respondents discharged their responsibilities in a professional and ethical manner, in good faith, and all actions were well within the parameters of accepted brokerage procedure and all exchange and governmental regulations;
7. The due process clause of the United States Constitution, applicable provisions of the New York State Constitution and various state and federal law precluded Claimant from recovering punitive damages;
8. New York law, which Claimant expressly agreed governed this dispute, precluded a party from recovering punitive damages in an arbitration proceeding;
9. Claimant's claims were time barred; and
10. Claimant's claims were barred in whole or in part by the doctrines of contributory/comparative negligence.

RELIEF REQUESTED

Claimant, Sue Kipling Isbell requested an award in the amount of \$244,614.28 in actual damages plus consequential damages for loss of income and mental anguish or exemplary damages in an amount of three times actual damages in excess of \$100,000.00 as well as interest, costs and attorneys' fees.

Respondents, Oppenheimer & Co, Inc. and Victor F. Wratten requested that the claims asserted against them be denied in their entirety and that costs be assessed against Claimant.

OTHER ISSUES CONSIDERED & DECIDED

Respondent, Victor F. Wratten did not file an executed submission agreement, but answered, appeared and testified at the hearing through their counsel. Pursuant to Section 12 of the Code of Arbitration Procedure, the arbitrators determined that the Respondent, Victor F. Wratten submitted to arbitration.

The parties have agreed that a handwritten, signed Award may be entered. The parties have agreed to receive conformed copies of the award while the original remains on file with the NASD.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearing as well as 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 & Co., Inc. and Victor F. Wratten are hereby jointly and severally liable for and shall pay to the Claimant, Sue Kipling Isbell the sum of \$200,000 in actual damages;
2. Respondents, Oppenheimer & Co., Inc. and Victor F. Wratten are hereby jointly and severally liable for and shall pay to the Claimant, Sue Kipling Isbell the amount of \$32,000.00 in pre-judgement interest;
3. Respondents, Oppenheimer & Co., Inc. and Victor F. Wratten are hereby jointly ;and severally liable for and shall pay to the Claimant, Sue Kipling Isbell the sum of \$57,000.00 in attorneys' fees and \$11,000.00 for costs. In deciding to award attorneys' fees and costs, the arbitrators considered the evidence and the testimony as well as the Texas Deceptive Trade Practices Act which was the legal authorities provided by the Claimant;
4. All requests for relief not specifically granted herein are hereby denied; and
5. The parties shall bear their own costs including attorneys' fees except for those specifically enumerated herein.

FORUM FEES

Forum fees are calculated at the rate of \$750.00 per hearing session. There were four (4) hearing sessions x \$750.00 = \$3,000.00 in forum fees. Pursuant to Section 43(b) of the Code of Arbitration Procedure (the "Code"), 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 Section 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 \$200.00 and shall retain as forum fees the hearing session deposit in the amount of \$750.00 previously deposited with the NASD by the Claimant, Sue Kipling Isbell. Respondents, Oppenheimer & Co., Inc. and Victor F. Wratten are joint and severally liable for and shall pay to the Claimant, Sue Kipling Isbell the sum of \$950.00 as reimbursement. Respondents, Oppenheimer & Co., Inc. and Victor F. Wratten are hereby jointly and severally liable for and shall pay the amount of \$2,250.00 in additional forum fees. In accordance with Section 45 of the Code, Oppenheimer & Co., Inc. is hereby liable for and shall pay to the NASD the sum of \$200.00 for the member surcharge.

The NASD shall retain the \$750.00 postponement fee previously submitted by the Claimant as well as the \$750.00 postponement fee previously deposited by the Respondents.

Fees are payable to the National Association of Securities Dealers, Inc.

Arbitrators' Signatures:

Dated:

Franklin Anthony Arnold, Esq.
Franklin Anthony Arnold, Esq.
Public Arbitrator, Presiding Chair

May 15, 1996

Felix L. Nigh, CPL
Felix L. Nigh, CPL
Public Arbitrator

May 16, 1996

Thomas H. Griffin
Thomas H. Griffin
Industry Arbitrator

May 15, 1996

Date served by the NASD: May 17, 1996