

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimant

Roy Clai Brown

- 95-00214

Name of Respondents

Oppenheimer & Co., Inc.
John Charles Edwards

REPRESENTATION

Claimant Roy Clai Brown ("Brown") was represented by John Connolly, Esq., Alexandria, VA

Respondents Oppenheimer & Co., Inc. ("Oppenheimer") and John Charles Edwards ("Edwards") were represented by Joseph Pickard, Associate General Counsel, Oppenheimer & Co., Inc., New York, NY

CASE INFORMATION

The Statement of Claim was filed January 16, 1995
Claimant's Uniform Submission Agreement was signed January 19, 1995

The Joint Statement of Answer of Oppenheimer and Edwards (collectively "Respondents") was filed on March 13, 1995
Oppenheimer's Uniform Submission Agreement was signed March 14, 1995
Edward's Uniform Submission Agreement was signed January 27, 1995

HEARING INFORMATION

Prehearing Date/Sessions: December 22, 1995/one session

Hearing Dates/Sessions: February 5, 1996/two sessions
February 6, 1996/two sessions

Hearing Location: NASD District Office
Washington, DC

Hearing Dates/Sessions: March 4, 1995/two sessions
March 5, 1995/two sessions

Hearing Location: NASD Inc.
Washington, DC

CASE SUMMARY

Claimant alleged, among other things, that Respondents induced Claimant to authorize unsuitable investments in low quality, over-the-counter stocks such as Liposome Technology, PLC Systems and Software Publishing. Claimant alleged that Edwards misrepresented the risk and future productivity of the stock Edwards promoted. Claimant alleged that Claimant was an unsophisticated investor and he relied upon the information provided to Claimant by Respondents. Claimant alleged that Claimant opened an account with Respondents with his only asset held in one stock, Home Depot, which Claimant had been accumulating during ten years of employment with Home Depot. Claimant alleged that Respondents were informed that Claimant's investment goals were college funding for his two young children and funds to provide financial assistance to his parents as they grew older. Claimant alleged that Respondents encouraged Claimant to buy on margin against Claimant's Home Depot stock. Claimant alleged that over nineteen months Respondents earned commissions of \$91,221.94 and margin interest of approximately \$80,000.00. Claimant alleged that the trading turnover ratio in Claimant's account indicates Respondents promoted such trading activity to generate commissions for Respondents and not increase investment values for Claimant. Claimant alleged that Respondents breached their contractual and fiduciary duty to Claimant based on the mismanagement of Claimant's account to benefit Respondents. Claimant alleged that Edwards made material misrepresentations and omissions in the recommendations made to Claimant which Claimant justifiably relied upon. Claimant alleged that Oppenheimer failed to adequately supervise Edwards, which resulted in excessive trading in unsuitable securities in Claimant's account. Claimant alleged that Respondents' activities violated Section 10(b-5) of the Securities Exchange Act of 1934 and Section 13.1-502 of the Code of Virginia and constituted common law fraud under Virginia law. Claimant alleged that Respondents' pattern of excessive trading in unsuitable securities, failure to observe due diligence and fraudulent activities through a series of misrepresentations and omissions violated the NASD Rules of Fair Practice. Claimant alleged that he suffered damages as a result of the activities of Respondents.

Respondents categorically denied all allegations of wrong-doing. Respondents maintained that Claimant informed Edwards that Claimant's investment objectives were trading short-term, business-risk appreciation and long term growth. Edwards maintained that Claimant's primary objective in the account was short-term trading for appreciation, not diversification. Respondents maintained that Claimant was not an unsophisticated investor and Claimant often sought out opportunities to invest in concentrated positions. Respondents maintained that Claimant was regularly informed and updated on the risks versus potential rewards of trading activity in Claimant's account. Respondents maintained that Claimant authorized all trading activity in Claimant's account. Respondents maintained that some investment activity in Claimant's account was

based on Claimant's own independent analysis and not that of Respondents. Respondents maintained that Claimant did not express any dissatisfaction about the management of Claimant's account when Claimant spoke with Oppenheimer's Atlanta Branch Manager, Will Lobb in September, 1993. Edwards maintained that high pressure tactics were never used when investment recommendations were made to Claimant, nor did Edwards ever suggest that he was privy to any type of "insider information". Respondents maintained that Claimant's account was managed in compliance with all applicable rules, regulations and laws. Respondents maintained that at all times Edwards was properly supervised in the management of Claimant's account. Respondents maintained that any losses suffered by Claimant were as a result of Claimant's own investment decisions and market fluctuations.

RELIEF REQUESTED

Claimant requested actual damages of \$420,000.00 as well as lost investment opportunity damages of \$50,000.00; pre-award interest; punitive damages; and the costs and fees, including reasonable attorney's fees attributed to this arbitration.

Respondents requested that the Statement of Claim be dismissed in its entirety and that the costs and expenses of this arbitration be assessed to Claimant.

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. That Respondents are jointly and severally liable to and shall pay to Claimant damages in the amount of \$75,179.68, without interest.
2. That the claim for punitive damages is denied.
3. That each party shall bear its own costs and expenses including attorney's fees.
4. That any relief not specifically addressed herein is denied.

OTHER COSTS

\$2,000.00 for two postponement fees to be assessed against Respondents, jointly and severally. Respondents to receive credit for \$750.00 posted towards the second fee, leaving a net assessment for postponement fees of \$1,250.00.

Claimant assessed \$120.00 for audio-tapes of the first two days of hearing.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed.

1 Prehearing Session x \$300.00 = \$300.00

Prehearing Forum Fees are assessed in equal amounts against Claimant and jointly and severally against Respondents.

8 Hearing Sessions x \$1,000.00 = \$8,000.00

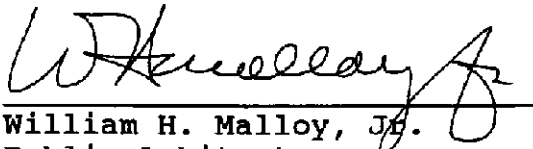
Forum Fees assessed against Claimant in the amount of \$3,000.00 and jointly and severally against Respondents in the amount of \$5,000. Claimant to receive credit for \$1,000.00 hearing session deposit filed with the NASD, leaving a net assessment in forum fees for Claimant in the amount of \$2,150.00. The net assessment in forum fees for Respondents is \$5,150.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

Ira S. Siegler, Presiding
Public Arbitrator


William H. Malloy, Jr.
Public Arbitrator

Pierre J. Dolan
Industry Arbitrator

Date Decision Served by NASD:

March 24, 1996

Claimant assessed \$120.00 for audio-tapes of the first two days of hearing.

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DATE

CONCURRING ARBITRATORS' SIGNATURES

March 25, 1996

Ira S. Siegler
Ira S. Siegler, Presiding
Public Arbitrator

William H. Malloy, Jr.
William H. Malloy, Jr.
Public Arbitrator

Pierre J. Dolan
Pierre J. Dolan
Industry Arbitrator

Date Decision Served by NASD:

March 26, 1996

Claimant assessed \$120.00 for audio-tapes of the first two days of hearing.

FORUM FEES

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Prehearing Forum Fees are assessed in equal amounts against Claimant and jointly and severally against Respondents.

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DATE

CONCURRING ARBITRATORS' SIGNATURES

Ira S. Siegler, Presiding
Public Arbitrator

William H. Malloy, Jr.
Public Arbitrator

3/25/96

Pierre J. Dolan
Pierre J. Dolan
Industry Arbitrator

Date Decision Served by NASD:

March 26/1996