

NASD REGULATION, INC. AWARD

Office of Dispute Resolution

In the Matter of the Arbitration Between

Name of Claimant

Gary Webster

Case No. 95-00377

Names of Respondents

Oppenheimer & Co., Inc.
Michael Ferris

REPRESENTATION OF PARTIES

For Claimant: Stephen C. Sadin, Esq., Chicago, IL.

For Respondents Oppenheimer & Co., Inc. ("Oppenheimer") and Michael Ferris ("Ferris"): Richard Kelly, Esq. of Oppenheimer & Co., Inc., New York, NY.

CASE INFORMATION

Statement of Claim filed: January 26, 1995. Claimant's First Amended Statement of Claim filed: December 9, 1996. Claimant's Submission Agreement signed: January 25, 1995.

Joint Statement of Answer filed: March 24, 1995. Respondents' Motion to Strike and Answer in Response to Claimant's First Amended Statement of Claim filed: January 31, 1997. Respondent Ferris' Submission Agreement signed: March 9, 1998. Respondent Oppenheimer's Submission Agreement signed: March 23, 1998.

HEARING INFORMATION

A telephonic pre-hearing conference was conducted on December 8, 1997 with NASD Regulation, Inc. staff presiding. The evidentiary hearing was conducted on March 9, 10 and 11, 1998, in Fort Lauderdale, Florida for a total of five (5) sessions.

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CASE SUMMARY

Claimant alleged the following: Respondents made unauthorized purchases of equity securities for Claimant's account. At Claimant's request, some of these trades were reversed but Claimant was charged the commissions. Respondents made misrepresentations of material facts and omitted to state material facts in order to induce Claimant to purchase unsuitable securities. Claimant alleged violations of Section 10 (b) of the Securities Exchange Act of 1934, and the federal RICO statute.

Respondents denied the allegations set forth in the Statement of Claim. Respondents specifically denied that Ferris ever engaged in any transaction without Claimant's prior authorization and approval; that Ferris agreed to cancel any of the transactions in question; or, that Ferris ever misrepresented the securities in question. Respondents asserted the affirmative defenses of failure to state a cause of action upon which relief can be granted; good faith; the damages allegedly suffered have no causal relationship with any act committed by or legally attributable to Respondents; failure to mitigate; assumption of risk; and, waiver.

RELIEF REQUESTED

Claimant requested an award of compensatory damages in the amount of \$152,699.97, treble damages pursuant to 18 U.S.C. Sec. 1961, costs, and attorney's fees.

Respondents requested that the Statement of Claim be, in all respects, dismissed and that the costs and disbursements be assessed against the Claimant.

OTHER ISSUES CONSIDERED & DECIDED

1. Claimant's motion to permit video testimony was granted.
2. Claimant's motion to reconsider the Panel's prior dismissal of the RICO claim was denied.
3. Respondents' motion to strike the testimony of John Phillip Jaeger and Dr. Robert K. Hotchkiss was granted.

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4. 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 Regulation, Inc. Office of Dispute Resolution.

AWARD

After considering the pleadings, the testimony, and the evidence presented at the hearings, the arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents are found not liable and, therefore, all claims against them are hereby dismissed.
2. Claimant's requests for attorney's fees, costs, and RICO damages are denied.
3. Respondents' request for costs is denied.

FORUM FEES

Pursuant to Rule 10332(b) of the NASD Code of Arbitration Procedure ("Code"), a hearing session is any meeting between the parties and the arbitrators, including a pre-hearing conference with an arbitrator, which lasts four hours or less.

Pursuant to Rule 10332(c) of the Code, the panel has assessed forum fees in the amount of \$3,750.00 (five (5) hearing sessions x \$750.00 per session).

1. Claimant is assessed the sum of \$1,875.00 for which NASD Regulation, Inc. shall retain the \$750.00 previously deposited in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. in the sum of \$1,125.00.
2. Pursuant to Rule 10319(b) of the Code, Claimant shall pay to NASD Regulation, Inc. the sum of \$750.00 representing payment of the previously invoiced postponement fee for the hearing scheduled for October 8 and 9, 1997.

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3. NASD Regulation, Inc. shall retain the claim filing fee of \$200.00 paid by the Claimant.

4. Respondents are assessed the sum of \$1,875.00 payable to the NASD Regulation, Inc.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrator's Signatures

/s/

Gary M. Landau, Esq.
Public Arbitrator, Presiding Chair

/s/

Douglas Delaney, Jr.
Industry Arbitrator

/s/

Gloria O. North, Esq.
Public Arbitrator

Date of Decision: 4-22-98