

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Joe D. Freeze and Glass Services, Inc.

95-00500

Name of Respondents

PaineWebber Incorporated;
Oppenheimer & Co., Inc.;
Larry Bishop

REPRESENTATION

For Claimant: Joe D. Freeze ("Freeze") and Glass Services, Inc. ("Glass") were represented by Frederick E. Roth, Esq. of Naperville, Illinois.

For Respondent: PaineWebber Incorporated ("PaineWebber") was represented by Marshall L. Blankenship, Esq. of Schuyler Roche & Zwirner, located in Chicago, Illinois. Oppenheimer & Co., Inc. ("Oppenheimer") and Larry Bishop ("Bishop") were represented by H. Nicholas Berberian, Esq. and Mark T. Carberry, Esq. of Neal Gerber & Eisenberg, located in Chicago, Illinois.

CASE INFORMATION

Statement of Claim filed: January 30, 1995.

Claimants' Submission Agreement signed on: January 18, 1995 by Joe D. Freeze, individually and as President of Glass Services, Inc.

Statement of Answer filed by Respondent PaineWebber on: March 16, 1995.

Respondent PaineWebber's Submission Agreement signed on: March 15, 1995 by Paul G. Thomas, Corporate Vice President, PaineWebber Incorporated.

Respondent Oppenheimer and Bishop's Statement of Answer, and Oppenheimer's Counterclaim filed on: April 18, 1995.

Respondent Oppenheimer's Submission Agreement signed on: February 14, 1995 by John T. McGuire, Managing Director, Oppenheimer & Co., Inc.

Respondent Bishop's Submission Agreement signed on: April 18, 1995.

HEARING INFORMATION

Pre-Hearing Conference: February 22, 1996 for One (1) session before One (1) arbitrator.
Hearing Dates/Sessions: April 11, 1996 for Two (2) sessions;
April 12, 1996 for Two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants alleged that Respondent Bishop, while employed by or acting as an agent for Respondents PaineWebber and Oppenheimer, engaged in the following conduct:

1. Misrepresented the risks of certain investment in common stocks and options, including guaranteeing a profit;
2. Engaged in unauthorized trading contrary to the agreed trading strategy;
3. Without consent, took positions in the market which placed Claimants in greater risk that their ability to assume or appreciate;
4. Misrepresented the reasons for Bishop's move from PaineWebber to Oppenheimer; and
5. Failed to disclose the relationship between the brokerage firm and the investments recommended.

Respondent PaineWebber denied the material allegations of the Statement of Claim, alleging that the trades at issue were fully authorized by the Claimants and were consistent with the extremely speculative trading strategy agreed to by Freeze and Glass. In addition, PaineWebber asserted that Claimants did not protest these trades until nearly four-and-a-half years after the trades and even followed Bishop to Oppenheimer. Furthermore, PaineWebber asserted several affirmative defenses.

Respondents Oppenheimer and Bishop denied the material allegations of the Claim, asserting that the Claimants' transactions were fully authorized by Freeze, and were suitable based on Freeze's oral representations to Bishop and his written representations to PaineWebber and Oppenheimer. In addition, Freeze received every confirmation and monthly statement, yet never complained to Oppenheimer of the transactions. Respondents also asserted several affirmative defenses, and Oppenheimer asserted a counterclaim against Claimants for sums due on a debit balance.

RELIEF REQUESTED

Claimants requested entry of an award in an amount of not less than \$200,000.00; all attorneys' fees; interest; and such other relief, including punitive damages, as the arbitrators deemed appropriate.

Respondent PaineWebber requested that all claims asserted against it in this proceeding be denied.

Respondents Oppenheimer and Bishop requested that the Claimants' claims be dismissed in their entirety. In addition, Oppenheimer requested that an award be rendered on the counterclaim for the amount of \$8,223.91, plus interest from April 21, 1992 until the date of the award.

OTHER ISSUES CONSIDERED & DECIDED

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.

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. Claimants Joe D. Freeze and Glass Services, Inc.'s claims against Respondents PaineWebber Incorporated, Oppenheimer & Co., Inc. and Larry Bishop are dismissed with prejudice and denied in their entirety;
2. Respondent Oppenheimer & Co., Inc.'s Counterclaim is hereby dismissed with prejudice and denied in its entirety;
3. The parties shall bear their own costs of arbitration, including attorneys' fees, except for those specifically enumerated herein; and
4. Any relief not specifically awarded is hereby denied.

OTHER COSTS

The National Association of Securities Dealers, Inc. shall retain the \$750.00 adjournment fee and the \$350.00 Section 45 surcharge paid by Respondent Oppenheimer & Co., Inc. Respondent PaineWebber Incorporated is liable for and shall pay to the NASD the sum of \$350.00 as the surcharge required by Section 45 of the NASD Code of Arbitration procedure.

FORUM FEES

Pursuant to Section 43(c) of the Code of Arbitration Procedure, the following Forum Fees are assessed: One (1) prehearing session before One (1) arbitrator x \$300.00 = \$300.00; Four (4) hearing sessions x \$750.00 per session = \$3,000.00; Total forum fees = \$3,300.00.

The National Association of Securities Dealers, Inc. ("NASD") shall retain the \$200.00 non-refundable claim filing fee paid by the Claimants. In addition, the NASD shall retain the \$750.00 hearing session deposit previously paid by the Claimants, Joe D. Freeze and Glass Services, Inc. as forum fees. Respondent PaineWebber Incorporated is liable for and shall pay to the NASD the sum of \$1,275.00 as forum fees. The NASD shall retain the \$500.00 non-refundable claim filing fee paid by Respondent Oppenheimer & Co., Inc. Furthermore, the NASD shall retain the \$300.00 hearing session deposit previously paid by Respondent Oppenheimer & Co., Inc. as forum fees. In addition, Respondent Oppenheimer & Co., Inc. is liable for and shall pay to the NASD the sum of \$975.00 as forum fees

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

Concurring Arbitrators' Signatures
Name

Date

/s/ Bradford S. Allen, Esq.
Bradford S. Allen, Esq.
Public Arbitrator
Chairperson

July 10, 1996

/s/ Alan E. Case, Esq.
Alan E. Case, Esq.
Public Arbitrator

July 15, 1996

/s/ Herbert J. Paske
Herbert J. Paske
Industry Arbitrator

July 10, 1996

For NASD Use Only
Date of Decision: July 15, 1996