

NASD REGULATION, INC. AWARD

In the Matter of the Arbitration Between

Name of Claimants

Robert and Jean Olen

Case No.
95-01385

vs.

Name of Respondents

Oppenheimer & Co., Inc.
Strasbourg Pearson Tulcin & Wolff Inc.
Haskell Israel

REPRESENTATION

For Claimants Robert and Jean Olen ("Claimants") appeared Christopher J. Calabrese, Esq., of the firm Elliot, Stern & Calabrese, LLP, located in New York, New York.

For Respondent Oppenheimer & Co., Inc. ("Oppenheimer") appeared Michelle A. Murphy, Esq., of the firm Oppenheimer & Co., Inc. located in New York, New York.

For Respondent Strasbourg Pearson Tulcin & Wolff, Inc. ("SPTW") appeared David Bolton, Esq., of the firm Stroock & Stroock & Lavan located in New York, New York.

Respondent Haskell Israel ("Israel") appeared pro se.

CASE INFORMATION

Statement of Claim filed on: March 14, 1995.

Claimants' Submission Agreement signed on: March 16, 1995.

Statement of Answer filed by Respondents Oppenheimer and Israel on: May 11, 1995.

Respondent Oppenheimer's Submission Agreement signed on: May 11 1995.

Statement of Answer filed by Respondent SPTW on: May 22, 1995.

Respondent SPTW's Submission Agreement signed on: May 22, 1995.

Statement of Answer filed by Respondent Israel on: April 17, 1995.

Respondent Israel's Submission Agreement signed on: May 17, 1995.

HEARING INFORMATION

Hearing Dates/Sessions:

July 30, 1997

Two Sessions

July 31, 1997
September 25, 1997
September 26, 1997

Two Sessions
Two Sessions
Two Sessions

The hearings were conducted at the Raddison Downtown located in Buffalo, New York.

CASE SUMMARY

Claimants alleged that they disclosed to Respondent Israel that they were unknowledgeable and unsophisticated investors, who wished to invest conservatively to provide income for their retirement. Claimants alleged that Respondent Israel made unsuitable purchases and recommendations in light of Claimants' financial position and investment objectives. Claimants further alleged that Respondent Israel made several questionable trades. Claimants also alleged that the disregard that Respondent Israel had for their investment objectives, while working at Respondent Oppenheimer and SPTW, caused them to suffer significant damages.

Respondents Oppenheimer and Israel, collectively referred to as "Respondents", denied the allegations contained in the Statement of Claim and denied that they are liable to Claimants for any alleged damages. Respondents maintained that Claimants stated at the opening of the account that their annual income was approximately \$75,000 and a net worth of approximately \$1,000,000.00, and that they wished to trade aggressively. Respondents further maintained that on the new account form the investment objective indicated by Claimants was appreciation with risk. Respondents also maintained that within a few weeks of opening their account, Claimants' executed a margin agreement.

Respondents maintained that Claimants' account remained at Oppenheimer, under the direction of Respondent Israel, from March 1989 to August 1991. Respondents further stated that in September 1991 Claimants continued to transact business with Respondent Israel at Strasbourger Pearson. Respondent Oppenheimer also stated that Claimants' account remained at Oppenheimer, since it was the clearing agent for Respondent SPTW, but that Oppenheimer has no liability to Claimants after August 1991. Respondents contended that Claimants' were aware of and accepted the risks involved with every transaction made in their account. Respondents further contended that by failing to complain about the transactions for over two years, Claimants ratified the transactions in their account. Respondents maintained, in asserting their affirmative defenses, that Claimants brought these claims in order to recoup losses sustained in connection with investments they knowingly and willingly made despite the risks involved.

Respondent SPTW denied both the allegations of wrongdoing in the Statement of Claim and any liability for monetary damages. Respondent SPTW maintained that Claimants were sophisticated investors who understood the risks involved. Respondent SPTW maintained Claimants indicated on their account application that their investment objectives were to be "business risk", and by the fact that Claimants executed a margin agreement and purchased securities on margin. Respondent SPTW further maintained that Claimants informed Respondent Israel that their investment objectives at another firm were aggressive. Respondent also maintained that while Claimants' account was with Oppenheimer they invested in several speculative, business risk stocks, and when their account transferred to SPTW they continued to do so thereby assuming the risks associated with such investments. Respondent SPTW stated that all recommendations were made in good faith and no misrepresentations were made to Claimants. Respondent SPTW further stated that almost all the securities increased in value during the course of time, but that Claimants chose not to sell. Respondent SPTW maintained it was not liable for 5,000 shares of Helionetics which were bought directly from the president of the company.

Respondent Israel maintained that he met with Claimants at their home on several occasions to discuss the opening of an account with Respondent Oppenheimer. Respondent Israel further maintained that the investment objective decided upon by Claimants was "business" risk and that the implications of this objective were fully explained to Claimants. Respondent Israel also maintained that Claimants indicated that they desired to invest upwards of \$200,000.00 in "well researched business risk ideas". Respondent Israel maintained that Claimants bought shares in Helionetics from the president of the company and refused to sell the shares when Respondent Israel recommended to do so. Respondent Israel further maintained that all his recommendations were made in good faith and that all transactions were authorized by Claimants.

RELIEF REQUESTED

Claimants requested damages totaling \$120,327.13, broken down against Respondents as follows:

- (a) against Respondents Oppenheimer and Israel damages in the amount of \$31,941.50; and
- (b) against Respondent SPTW and Israel damages in the amount of \$88,385.63.

Respondents Oppenheimer and Israel requested that the Statement of Claim be dismissed in its entirety and that the costs of this proceeding be assessed against Claimants.

Respondent SPTW requested that the Statement of Claim be dismissed and all other such relief that the panel deems appropriate.

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 original remains 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. Respondents Oppenheimer and Israel be and hereby are jointly and severally liable and shall pay to Claimants damages in the amount of \$7,500.00.
2. Respondents SPTW and Israel be and hereby are jointly and severally liable and shall pay to Claimants damages in the amount of \$7,500.00, plus 9% interest per annum accruing from February 09, 1998 until the date this award is paid.
3. All other requests for relief are hereby denied.

FORUM FEES

Pursuant to Rule 10332 of the NASD Regulation Code of Arbitration Procedure, the arbitrators have determined that the NASD will retain the \$200.00 non-refundable filing fee deposited by Claimant, the \$750.00 postponement fee deposited by Claimant, the \$750.00 postponement fee deposited by Respondent SPTW, and have assessed the following Forum Fees:


8 Hearing Sessions x \$750.00	=	<u>\$6,000.00</u>
Total Forum Fees	=	\$6,000.00

1. Respondent Oppenheimer be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$2,625.00 representing one-half of the total forum fees assessed less one-half of the hearing session deposit.
2. Respondent Oppenheimer be and hereby is liable and shall pay Claimant the sum of \$375.00 as reimbursement of one-half of the hearing session deposit.
3. Respondent SPTW be and hereby is liable and shall pay NASD Regulation, Inc. the sum of \$2,625.00 representing one-half of the total forum fees assessed less one-half of the hearing session deposit.
4. Respondent SPTW be and hereby is liable and shall pay Claimant the sum of \$375.00 as reimbursement of one-half of the hearing session deposit.
5. Respondent Oppenheimer be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$350.00 representing the Member Surcharge assessed. Respondent Oppenheimer deposited \$350.00 with NASD Regulation, Inc., and therefore, has satisfied the Member Surcharge.
6. Respondent SPTW be and hereby is liable and shall pay to NASD Regulation, Inc. the sum of \$350.00 representing the Member Surcharge assessed.

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

ARBITRATORS' SIGNATURES

I, Robert Gleichenhau, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award,


Robert Gleichenhau, Esq.
Public Chairperson

I, John P. DeLuca, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award,

John P. DeLuca
Public Panelist

I, Robina Fedora Asti, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award,

Robina Fedora Asti
Industry Panelist

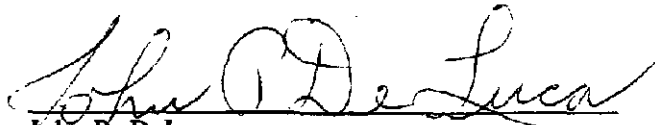
Date of Decision: March 11, 1998

ARBITRATORS' SIGNATURES

I, Robert Gleichenhaus, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award,

Robert Gleichenhaus, Esq.
Public Chairperson

I, John P. DeLuca, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award,



John P. DeLuca
Public Panelist

I, Robina Fedora Asti, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award,

Robina Fedora Asti
Industry Panelist

Date of Decision: March 11, 1998

ARBITRATORS' SIGNATURES

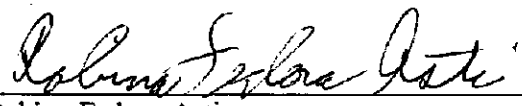
I, Robert Gleichenhaus, Esq., do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award,

Robert Gleichenhaus, Esq.
Public Chairperson

I, John P. DeLuca, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award,

John P. DeLuca
Public Panelist

I, Robina Fedora Asti, do hereby affirm, pursuant to Article 7507 of the Civil Practice Law and Rules, that I am the individual described herein and who executed this instrument which is my award,



Robina Fedora Asti
Industry Panelist

Date of Decision: March 11, 1998