

NASD Regulation, Inc. AWARD

NASD Regulation, Inc.

In the Matter of the Arbitration Between

Name of Claimant(s)

Steven Mait

95-02863

Name of Respondent(s)

Oppenheimer & Co., Inc.

REPRESENTATION

For Claimant Steven Mait ("Mait"): Ronald Shindler, Esq. of Fowler, White, Burnett, Hurley, Banick & Stickroot, Miami, Florida.

For Respondent Oppenheimer & Co., Inc. ("Oppenheimer"): John Hecht, Esq. of Morvillo, Abramowitz, Grand, Iason, & Silberberg, P.C., New York, New York.

CASE INFORMATION

Statement of Claim filed: June 12, 1995. Claimant's Submission Agreement signed on: June 3, 1995.

Statement of Answer filed by Respondent on: August 22, 1995. Respondent's Submission Agreement signed on: August 17, 1995 by Joseph C. Pickard on behalf of Oppenheimer.

HEARING INFORMATION

On March 7 and 22, 1996 and April 10, 1996 telephonic pre-hearing conferences were conducted with an arbitrator.

On April 17, 18, 19, 23, 24, 25, 26 and 30, 1996, May 1 and 2, 1996, January 28, 29 and 30, 1997 and February 4, 5, 6, 7, 10 and 11, 1997 hearings lasting a total of 38 sessions were conducted in Ft. Lauderdale, Florida.

CASE SUMMARY

Claimant alleged that he was wrongfully terminated by Respondent and that Respondent filed a false, defamatory and malicious Form U-5 concerning his termination. Claimant alleged that

Respondent gratuitously linked a supposed violation of firm policy with respect to sending out correspondence without approval to a pending grand jury investigation of some of Claimant's customers. Claimant maintained that he did not send out any correspondence without the approval of his branch manager and, therefore, the Form U-5 was false. Claimant further alleged that Respondent maliciously attempted to create a false impression in the eyes of the securities industry and the public that he was implicated in criminal activity.

Claimant further alleged that Respondent was negligent in discharging its supervisory and surveillance activities with respect to the accounts of Claimant's customers. Claimant next maintained that, as a result of Claimant's precautions, neither Respondent nor any of its clients lost any money.

Claimant next maintained that Respondent was liable for negligence, intentional infliction of emotional distress and tortious interference with business relations. Claimant alleged that Respondent wrongfully withheld compensation and expense reimbursements and was liable for indemnification of his prior legal fees and expenses incurred during the course of an investigation by the U.S. Attorney's Office and the Securities and Exchange Commission pursuant to Delaware state law as well as for the legal fees of this proceeding.

Respondent alleged that Mait was an at-will employee whom Oppenheimer was entitled to terminate without providing any reason. Respondent maintained that, notwithstanding the fact that no reason was required to terminate Claimant, Oppenheimer had many reasons to terminate Claimant. Oppenheimer further alleged that it did not act negligently, breached no duty and caused no harm to Mait and the Form U-5 filed by Oppenheimer was absolutely privileged. Respondent next maintained that the statements contained in the Form U-5 were true and Respondent filed the Form U-5 for a proper purpose.

Respondent alleged that it acted reasonably towards Mait at all times, did not intend to harm him and assisted him to the extent it reasonably deemed appropriate. Respondent next maintained that it did not defame Mait or interfere with any business relations of Claimant and Mait is not entitled to indemnification. Respondent next maintained that it did not withhold any compensation owing to Mait.

Respondent asserted a counterclaim against Mait for expenses that it incurred due to Mait's misconduct in connection with a grand jury investigation involving Mait and certain of his customers.

Claimant denied all allegations of wrongdoing in connection with Respondent's counterclaim.

RELIEF REQUESTED

Claimant requested dismissal of the counterclaim plus damages in excess of \$4,000,000.00 plus interest, punitive damages, treble damages pursuant to Florida's Civil Theft Statute and that Respondent be directed to file an amended Form U-5.

Respondent requested dismissal of the claim. Respondent further requested damages on its counterclaim in excess of \$100,000.00 plus attorney's fees and such other relief as the panel

considers just.

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(s) remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing and post hearing submissions (if any), the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondent is found liable and shall pay to Claimant the amount of \$250,000.00 inclusive of interest.
2. The panel finds that Claimant is also entitled to an award of attorney's fees incurred by him in connection with the prosecution of this arbitration action, the SEC investigation, and the investigation of the US Attorney's office, pursuant to Claimant's claim of indemnification. The panel leaves the amount of such attorney's fees to be determined by a court of competent jurisdiction.
3. Claimant's requests for treble damages and punitive damages are denied.
4. The panel hereby orders Respondent to file an Amended Form U-5 with the appropriate regulatory agencies as follows:
 - a. Question 12 of the Form U-5 (Reason for Termination) shall be amended to read: "The U.S. Attorney's Office conducted an investigation wherein several of Mr. Mait's customers were targeted. It became apparent that Mr. Mait might become a witness. Therefore, the firm felt it prudent to sever our relationship with him."
 - b. Question 4 of the Disclosure Reporting Page (DPR) shall be amended to read: "Grand Jury investigation." The remaining information in Question 4 shall be deleted.
 - c. Question 8 of the DPR shall be amended to read: "Investigation pending."
5. Claimant is found not liable to Respondent and, therefore, the counterclaim against him is hereby dismissed.

OTHER COSTS

Other than the forum fees noted below, the parties shall each bear all other costs and expenses incurred by them in connection with this proceeding.

FORUM FEES

Pursuant to Rule 10205(c) of the Code of Arbitration Procedure, the panel has assessed forum fees in the amount of \$57,900.00 (38 sessions x \$1,500.00 per session plus 3 pre-hearing conferences with a single arbitrator x \$300.00 per conference).

1. Claimant is hereby assessed forum fees in the amount of \$28,950.00 for which NASD Regulation, Inc. shall retain the \$1,500.00 previously deposited by Claimant in partial satisfaction thereof, leaving a balance due to NASD Regulation, Inc. of \$27,450.00.
2. Respondent is hereby assessed forum fees in the amount of \$28,950.00 for which NASD Regulation, Inc. shall retain the \$28,950.00 previously deposited by Respondent in full satisfaction thereof.
3. NASD Regulation, Inc. shall retain the \$500.00 claim filing fee previously paid by Claimant.
4. NASD Regulation, Inc. shall retain the \$500.00 claim filing fee previously paid by Respondent for the counterclaim.
5. NASD Regulation, Inc. shall retain the \$1,500.00 postponement fee previously paid by Respondent for the postponement of the November, 1996 hearing dates.

Fees are payable to NASD Regulation, Inc.

Concurring Arbitrators' Signatures

Name

Public/Industry

_____/s/_____
Randy R. Freedman, Esq.

Public/Chairman

_____/s/_____
Robert Hyman, Esq.

Public

_____/s/_____
Douglas Delanoy, Jr.

Industry

Date of Decision: April 7, 1997