

NATIONAL ASSOCIATION OF SECURITIES DEALERS REGULATION, INC.

Hearing Location: NASD Regulation District Office
Philadelphia, PA

CASE SUMMARY

Claimant alleged, among other things, that Respondents SSI Securities and Opp (collectively "Respondents") induced him to purchase unsuitable securities through the use of misrepresentations and omissions of material fact. Claimant alleged that he purchased securities solely in reliance upon Opp's advice, alleged expertise and recommendations. Claimant alleged that Claimant purchased stock in a company called Quality Products, Inc. ("QP") and to a lesser extent, Alter Sales ("AS"). Claimant alleged that Claimant invested in excess of Four Hundred Twenty Thousand dollars (\$420,000.00) in QP, some on margin, and in AS, all upon the advice and constant urging of Opp. Claimant alleged that QP and AS were highly speculative and unsuitable stocks based upon Claimant's income of \$150,000.00 and net worth of \$250,000.00 as listed on the Customer Account Information sheet. Claimant alleged that these two stocks were presented to him by Opp as solid investments in substantial companies, especially QP, in which Opp was intimately knowledgeable. Claimant alleged that Opp claimed a personal relationship with QP CEO, James S. Renaldo, with whom Opp claimed to speak weekly. Additionally Claimant alleged, Opp was a distributor, agent and/or servant of QP and/or its predecessor or subsidiary companies. Claimant alleged that Opp, along with his father, purchased between \$30,000.00 - \$50,000.00 dollars worth of QP goods for resale. Claimant alleged that Opp also arranged for a company called Casa Bell Holdings to make a sizeable investment in QP for which Opp received a finder's fee of four thousand (4,000) shares of QP stock. Claimant alleged that SSI was a market maker for QP, as well as, AS.

Claimant alleged that in an effort to further induce Claimant to purchase the securities herein, Opp falsely represented to Claimant, that Opp owned shares in each and every security which Opp recommended to Claimant in quantities which exceeded those of Claimant. Claimant acted in reliance upon said representations. However, Claimant alleged that Opp had little, if any of the securities which he recommended to Claimant.

Claimant alleged that in December, 1993, QP was selling at over \$15.00/share. Claimant alleged that during this time Opp was on vacation and unavailable and failed to make arrangements, as promised, for Claimant to transact business through SSI's main office in Denver, Colorado while Opp was away. Claimant alleged that he did, in fact, call SSI in Denver, Colorado when Claimant attempted to sell his QP stock. Claimant alleged that no one at SSI was aware of his account and Claimant was informed that no Pennsylvania licensed broker was available to handle Claimant's desired sale of his stock. Claimant alleged that by the time Claimant spoke to an appropriate SSI broker, one who was licensed to do business in Pennsylvania, QP's stock price had already dropped significantly. Claimant alleged that if Claimant had been able to sell his stock at the time he originally called, he would have realized a profit of approximately \$500,000.00. Claimant alleged that when Opp returned from his vacation, Opp advised Claimant not to sell because QP's stock price was going to go back up. Claimant alleged that to date, QP stock has not gone above the high reached in December, 1993. Claimant additionally alleged that Opp failed to execute several of Claimant's sell orders. Claimant alleged that Respondents' failure to execute his unconditional sell orders violated state and federal laws as well as NASD regulations.

Claimant alleged that in order to induce Claimant to purchase Twenty Thousand (20,000) shares of AS just prior to August 17, 1993, Opp fraudulently and intentionally misrepresented to Claimant that AS had earnings to support its current price; that it was going to merge with another company; and that the stock price would soon double, none of which occurred. Claimant alleged that he relied upon Opp's false statements and lost \$31,655.00.

Claimant alleged that SSI failed to adequately supervise Opp's activities. Claimant alleged that SSI's lack of supervision violated NASD Rule 3010. Claimant alleged that SSI admitted never inspecting Opp's one man office in California.

Claimant alleged that he has two QP transactions which occurred while Opp was employed by SSI which indicated that Claimant purchased 5,000 shares of QP for \$50,000.00, while Claimant actually received 8,300 shares. Claimant also alleged that records reflect that he also purchased 3,000 shares for \$26,250.00 while, in fact, he actually received 4,000 shares. Claimant alleged that this was an obvious attempt by SSI and Opp to artificially inflate the price of the QP stock in which SSI was a market maker.

Claimant allege violations of the Securities Act of 1934; violations of the Pennsylvania Securities Act of 1972; violations of the Pennsylvania Unfair Trade Practices and Consumer Protection Law (73 P.S. Section 201-1, et seq); breach of fiduciary duty; breach of contract; common law fraud; misrepresentation; negligence; recommending investments which were completely unsuitable to Claimant's objectives and a failure to supervise.

Respondents denied all allegations of wrong-doing as asserted in the Statement of Claim. Respondents maintained that Claimant is a young, high income professional with no dependents and over 20 years experience investing in the stock market, in addition to over 10 years experience investing in options. Respondents maintained that Claimant had numerous brokerage accounts simultaneously and invested almost entirely in small capitalization over-the-counter stocks as well as options, often on margin. Respondents maintained that Claimant's IRS 1040 Schedule Ds from 1989 to 1994 show that Claimant consistently lost tens of thousands of dollars annually buying and selling such stocks and options, the vast majority of which were neither purchased nor sold through SSI.

Respondents maintained that from December 1990 through December 1993, Claimant regularly purchased the stocks of a company called Playtime Toys ("PT") and the company it eventually merged with, Quality Products, Inc. ("QP"). Respondents maintained that Claimant actively and consistently purchased and sold these stocks at six (6) different brokerage firms, including SSI. Respondents maintained that Claimant has a long history of suing brokerage firms and that SSI is the fourth firm he has sued.

Respondents maintained that Claimant began his relationship with Respondent Robin Opp in 1989 when Opp was a registered representative at First Eagle Securities and followed Opp to Olsen Payne Securities in 1990 and to SSI in 1992. Respondents maintained that when Claimant opened his account at SSI in approximately June 1992, by transferring his positions from Olsen Payne, he already had a two-three year history with Opp and a substantial position in the stock of PT and QP. Respondents maintained that by January 1993, Claimant had virtually all of his securities either certificated or wire transferred out of SSI to his account at A.G. Edwards & Sons ("AGE") and his account at SSI was dormant for the next eight months. Respondents maintained that prior to transferring this account over to AGE, Claimant purchased a total of 29,825 shares of PT and QP for a total price (including commissions) of \$154,266.50 (\$5.17/share). Respondents maintained that in August 1993, Claimant reactivated his SSI account and wire transferred 40,000 shares of QP into his SSI account from his AGE account. Respondents maintained that Claimant's only subsequent purchases of QP through SSI were 5,000 shares on August 31, 1993 at \$11 3/8 share and 5,000 shares on September 16, 1993 at \$11 7/16 share. Those two purchases raised his position at SSI to a total of 50,000 QP shares, of which he had purchased 39,825 at SSI for \$268,345 (including commissions), an average of \$6.70/share.

Respondents maintained that on December 1, 1993 Claimant called SSI, possibly intending to sell some of his QP stock, but Opp was on vacation and the transaction did not occur. Respondents maintained that

Claimant admitted he never actually placed a sell order for any particular number of shares or at any particular price. Respondents maintained that within a couple of hours of Claimant's call to SSI that a broker was ready, willing and able to make the sale and informed Claimant of that. But Respondents maintained that Claimant changed his mind.

Respondent SSI maintained that Opp was adequately and appropriately supervised in the management of Claimant's account at all times. In fact, SSI maintained that Claimant can show no reason why his account merited enhanced supervision of Opp as the stocks Claimant bought and sold were the same, or similar in character, to the stocks he transferred into his SSI account from other brokerage firms. In addition, SSI maintained that Claimant never complained to SSI about Opp until after he had liquidated his SSI account. Respondents maintained that Opp never delayed any of Claimant's orders to sell lots of QP stock. Respondents maintained that while Claimant posits the absurd proposition that Opp refused to sell Claimant's 1,000-2,000 share lots to protect the market for QP stock from crashing, the trading volume for QP stock ranged from a low of 29,200 shares (May 25, 1994) to 139,700 shares (June 23, 1994) and averaged over 84,000 shares per day for the dates in question. Respondents maintained that Opp made his living as a stockbroker executing customer's purchase and sell orders for commissions as did SSI. Respondents maintained that there is no logic to Claimant's contention that Opp was refusing to execute trades.

Respondents maintained that while Claimant has also alleged that he purchased 20,000 shares of the \$3 stock of a company called Alter Sales ("AS") in August 1993 based on the misrepresentations that Opp told him AS was going to merge with another company. However, Respondents maintained that Claimant provides no details of the misrepresentations, such as the identity of the merger partner or even what industry it was in. Respondents maintained that AS's stock declined and Claimant lost money, when he sold it from January - March 1994. Respondents maintained that Claimant has neither alleged or demonstrated anything exceptional about this transaction that could elevate it to actionable securities fraud.

RELIEF REQUESTED

Claimant requested damages in excess of Five Hundred Thousand (\$500,000.00) by virtue of the aforementioned unlawful conduct of Opp and SSI.

Respondents requested that the Statement of Claim be dismissed in its entirety and Respondents awarded their costs as well as SSI's attorneys fees.

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.

That pursuant to the by-laws of the NASD and Rule 10301 of the NASD Regulation's Code of Arbitration Procedure ("Code"), the panel determined that Respondent Opp was required to submit to this arbitration notwithstanding his failure to file an executed Submission Agreement. Therefore, Respondent Opp is bound by the panel's rulings and determinations.

The panel considered Respondents' Motion to Dismiss and Claimant's Response thereto, as well as Claimant's Motion To Bar Documentary Evidence and Respondent's Response thereto and denied the Motions.

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 the Statement of Claim is denied in its entirety.
2. That each party shall bear its own costs and expenses, including attorney's fees, with the exception of forum fees as specified below.
3. That any and all relief not specifically addressed herein is denied.

FORUM FEES

Pursuant to Rule 10332(c) of the Code of Arbitration Procedure, the following Forum Fee(s) are assessed:

1 Prehearing Session x \$300.00 =	\$ 300.00
8 Sessions x \$750.00 =	\$6,000.00
Total	\$6,300.00

Forum Fees are assessed to Claimant. Claimant is to receive credit for the \$750.00 hearing session deposit previously submitted to the NASD Regulation, leaving a net assessment due of \$5,550.00.

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

DATE

CONCURRING ARBITRATORS' SIGNATURES

4/9/97

Fred S. Pieroni

Fred S. Pieroni, Chairman
Public Arbitrator

Albert Mancini, Jr.
Public Arbitrator

Dale A. Pope
Industry Arbitrator

Date Decision Served by NASD Regulation: April 25, 1997

DATE

CONCURRING ARBITRATORS' SIGNATURES

Fred S. Pieroni, Chairman
Public Arbitrator

April 9, 1997

Albert Mancini, Jr.
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Public Arbitrator

Dale A. Pope
Industry Arbitrator

Date Decision Served by NASD Regulation: April 25, 1997

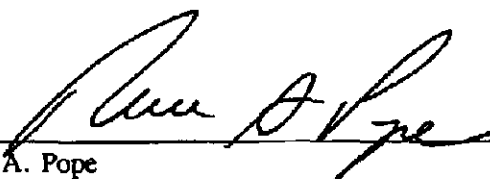
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